CC:030
60
56
022

Royal Caribbean Cruises Ltd.

1050 Caribbean Way, Miami, Florida 33132-2096
305 / 539-6000 TDD 305 / 539-4440

October 7, 1996

Mr. Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol St., NW
Washington DC 20573

Re: Federal Maritime Commission
46 CFR Part 540 [Docket No. 94-06]
Financial Responsibility Requirements for
Nonperformance of Transportation

Dear Mr. Polking:

Royal Caribbean Cruises Ltd. (NRCCL") hereby respectfully submits the following comments to the proposed rule in Docket No. 94-06. RCCL is a member of the International Council of Cruise Lines ("ICCL") which is submitting comments on behalf of its members. RCCL supports the comments submitted by the ICCL. In addition, RCCL would like to make the comments set forth below.

RCCL currently operates ten cruise ships and is one of the largest cruise ship operators in the world. The majority of RCCL's itineraries embark from U.S. ports and carry U.S. passengers. RCCL supports the efforts of the Federal Maritime Commission (the "Commission") to better protect U.S. passengers by ensuring that there are sufficient safeguards for the financial responsibility of all cruise lines. RCCL believes that changes in the guidelines to evidence financial security will enhance the public's perception of the industry. RCCL further believes it is in the best interest of the industry as a whole to protect the cruising public in the event an individual cruise line is unable to fulfill its obligations.

Basically, RCCL supports the Commission's proposed scales of coverage. In addition, we are in favor of continuing the option of self-insurance; however, RCCL believes that the criteria for self-insurance need to be revised in order to make it a feasible option.

AMOUNT OF SECURITY FOR FINANCIAL RESPONSIBILITY

There have been various proposals put forth to implement a sliding scale which would increase the level of financial responsibility for nonperformance to more accurately reflect the amount of unearned passenger revenue ("UPR"). The initial concept of the sliding scale was set forth in a proposal by the ICCL in 1994. The current proposal by the Commission is similar to many of the concepts proposed by the ICCL over the past few years. The main feature of the scale would be to provide adequate coverage for the cruise passengers through standards which are adaptable as the cruise industry changes. This flexibility allows the coverage to change without the necessity for frequent revisions to the regulations.

RCCL supports the scales of coverage proposed by the Commission. Specifically, we believe the concept of both a "Reduced Coverage Scale" and a "Standard Coverage Scale" is effective in protecting the public.

1. Reduced Coverage Scale. RCCL believes that the Reduced Coverage Scale should be applicable to operators if they (i) evidence at least five years of operation in U.S. trades; (ii) provide a satisfactory explanation of any nonperformance claims; and (iii) maintain a debt rating of investment grade or higher. RCCL believes that a company that has attained a debt rating of investment grade or better should qualify for the Reduced Coverage Scale. A change to investment grade rather than an "AAA" rating more properly reflects the nature of the cruise industry and makes this requirement consistent with that used by other government agencies and private companies to judge the creditworthiness of a company. The rating companies use stringent criteria to elevate a company to the investment grade rating. A company is not elevated to the level of investment grade unless Moody's or Standard & Poor's believes that the company will remain in such a rating for a period of time. These companies represent the type of lower risk operators to which the Reduced Coverage Scale is intended to apply.

2. Standard Coverage Scale. For those operators who are unable to meet the criteria to qualify for the Reduced Coverage Scale, RCCL believes that the Standard Coverage Scale will provide the level coverage which would be appropriate to meet the goals of providing financial responsibility.

3. Phase in. RCCL agrees with the Commission that there should be a phase in period for the increased coverages. The sliding scale coverage mechanism should be phased in over a period of time to allow the

operators an opportunity to adjust their capital structure and work with their financial institutions to meet the new coverages.

In summary, we agree with the FMC on its proposed coverage scales. However, in light of the increased levels of coverage, we have additional comments on the concept of self-insurance for those operators who can demonstrate a sufficient level of financial strength.

SELF-INSURANCE

The ability to self-insure is of even more importance as the levels of coverage for financial responsibility increase. RCCL agrees with the ICCL and comments previously submitted by Carnival Corporation which would revise the self-insurance criteria. The purpose of self-insurance is to permit those operators which have the strongest financial capability, and therefore are less likely to default on their obligations, to utilize this financial strength to self-insure the financial responsibility. The Commission has already recognized that financially secure operators pose less of a risk when it proposed the 'Reduced Coverage Scale. While RCCL is pleased that the Commission is proposing to continue with the self-insurance program, the criteria proposed by the Commission are unworkable given the nature of the cruise industry. The self-insurance proposal by the Commission is untenable in that it fails to take into account non-U.S. assets. In addition, the requirement that working capital equal or exceed UPR is not feasible. The Commission may benefit from consulting with a world-class financial institution which operates on a global basis to reconfirm that providing credit to companies with foreign based assets is typical and not problematic. RCCL believes that the Commission will find that because of the global nature of business today, that a view which focuses solely on U.S. based assets is too narrow and out-dated.

RCCL believes that the Commission should look at alternative criteria for determining whether an operator may self-insure. The ICCL and Carnival Corporation have suggested that other tests be implemented. For example, a liquidity test has been proposed in which the operator's cash, short term investments and undrawn credit lines must equal or exceed 100% of the UPR, and the operator must maintain a minimum tangible net worth equal to 300% of UPR. RCCL supports these types of criteria because not only do they reflect the true nature of the cruise industry and are attainable, they provide an appropriate level of protection to the public.

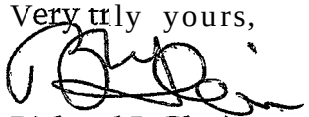
CONCLUSION

RCCL supports the efforts of the Commission to narrow the gap between coverage and UPR as a means of enhancing protection for the public. The sliding scale proposed by the Commission is an excellent approach and will provide increased protection while maintaining flexibility in the regulations to allow the coverage to adapt as the cruise industry changes. RCCL believes that the Reduced Coverage Scale should be applied to those carriers who have obtained an investment grade debt rating.

RCCL appreciates the Commission's support of maintaining the self-insurance provisions, especially in light of the proposed increases in coverage, and urges the Commission to take a more progressive and practical view of setting the parameters for qualifying to self-insure.

Royal Caribbean Cruises Ltd. is pleased to have the opportunity to provide comments to the proposed rulemaking proceeding.

Very truly yours,



Richard J. Glasier
Executive Vice President, CFO

CC: 030
60
50
021

NORWEGIAN' CRUISE LINE

FACSIMILE

To: Joseph C. Polking
Company: Federal Maritime Commission
Phone: 2025235725
Fax: 2025230014

From: Robert M. Kritzman, Esq.
Company: Norwegian Cruise Line Limited
Phone: (305)460-3867
Fax: (305)460-3844

Date: 10/15/96
Pages including this cover page: 4

Message: Original of the attached is being sent today via Airborne Express.

NORWEGIAN CRUISE LINE
October 14, 1996

Mr. Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Re: Docket No. 94-06 - Proposed Rule
Financial Responsibility Requirements for
Nonperformance of Transportation - Issuance of Performance Certificates

Dear Mr. Polking:

Norwegian Cruise Line Limited ("NCL") and its predecessor companies were pioneers in the development of the modem North American cruise industry, NCL has been in the cruise business since the Federal Maritime Commission ("FMC" or "Commission") began issuing Performance Certificates some thirty years ago. Today, with a fleet of seven vessels, there is no company with more Caribbean cruise experience than NCL. Nor is there any cruise company with a better record for performance of its transportation obligations to its passengers. With this long and solid performance history, NCL was as surprised as the rest of the cruise industry[1] when the Commission commenced the proceedings in this docket some two and one-half years ago.

We are surprised by the commencement of these proceedings because the current regulations implementing the Performance Certificate program have been the subject of a series of rulemakings, investigations and other inquiries since 1990, which culminated in the current rules. The fundamental proposal in the pending docket is the elimination of the current $15 million coverage ceiling. This same proposal bad been rejected when the Commission increased the ceiling from $10 million to its current level (55 Fed Reg. 34564). Later, in the Commission's exhaustive investigation of the issue, removal of the ceiling was found to bc unwarranted (Fact Finding Investigation No. 19, at p. 25). Now the current rulemaking once again proposes elimination of the ceiling, but with little or *no* explanation why elimination is necessary. While NCL supports the ICCL's most recent comments submitted in this docket, it is important to note that the ICCL did not support, as the member lines could not agree on supporting, the elimination of the $15 million ceiling.

[1] As a member of the International Council of Cruise Lines ("ICCL"), the cruise industry trade association, NCL supports the most recent comments submitted by ICCL in this docket.

Had there been evidence of a problem in the industry, the regulatory reversal could be explained. To the contrary, history has proven the program works extremely welt in protecting the public fiom the fly-by-night operators that were tie focus of the original statute (Public Law 89-777). Unlike NCL and the other established cruise ship companies which have a long-standing record of good service, those operators the statute intended to reach have made no commitment to serve the traveling public in the United States. The existing regulations have worked well to keep these operators out of the United States. They have worked so well, in fact, that in the thirty years the program has been in existence there has not been a single reported instance of a passenger failing to recover advance fares or deposits in the face of non-performance of transportation over which the FMC has jurisdiction.

Because there is no history of nonperformance of transportation, the suggested reason for the proposed change in rules is that the aggregate industry-wide level of Unearned Passenger Revenue (UPR) has grown so dramatically that the present level of bonds or other coverage is now insufficient. The problem with this explanation, however, is that based on information provided by the Commission, total UPR is identical to the estimated total UPR at the time the current rule was adopted. Moreover, the actual level of coverage since then has increased some 17% (from $250 million to $300 million) leaving the real reason for the proposed elimination of the ceiling unexplained. Even the occasional business failure! is au insufficient rationale for changing these rules where no passenger within the Commission's jurisdiction has ever lost an advance fare deposit.

The proposed elimination of the current ceiling will impose an enormous burden on existing cruise operators without any discernible improvement in the ability of the traveling public to recover advance fares or deposits in the event of non-transportation+ The cruise industry will have to increase dramatically its cash reserves set aside to meet the new requirements. For NCL the new rules will mean a six-fold increase in these reserves of cash or other collateral. This is a remarkable burden for a company, and au industry, that has an impeccable record of performance. Such a requirement will necessarily increase costs to travelers. It will limit the company's flexibility. It will provide a powerful disincentive to operate out of U.S. ports, in favor of nearby foreign ports and it will be extraordinarily anti-competitive. Those few very large companies with the deepest pockets and the wealthiest parents will be able to obtain bonds at a cost and in a manner that will simply be unavailable to others in the industry, as the comments of the Surety Association of America in this docker suggest (see letter dated August 15, 1996). One of the practical consequences of the Commission's proposed rule may well be a forced consolidation of the industry to the benefit of the very largest operators. Ultimately this will reduce competition. decrease the choices available to consumers and increase consumer costs.

Our concern with the rulemaking process is that these potential consequences appear not to have been examined in developing the proposed rule. Nor have the other realities of the cruise industry been give adequate consideration. The fact that a large percentage of the traveling public is already protected by credit card purchases or private insurance options is clearly relevant in assessing the risks to the traveling public, yet the Commission has failed to consider these factors.

We do not believe Congress intended the Commission to ignore relevant circumstances such as these additional consumer protections when enacting regulations pursuant to Public Law 89-777. There comes a point where the benefits of regulatory action are outweighed by the costs imposed on those to be regulated, and in this case it is the operators *and* the traveling public that will suffer significant cost increases in return for only the most hypothetical of benefits. Before the Commission decides to proceed with this rulemaking, NCL strongly encourages the Commission to undertake a full cost-benefit analysis of the impact of the proposed rule on the entire industry and the anti-competition effects such a rule wilt have on the traveling public.

Should the Commission conclude that further changes are required after undertaking such an analysis, NCL suggests that the issue be dealt with as it has been in the past. That is simply to increase the ceiling to accommodate inflation and the passage of time. Such an increase, tied to the Consumer Price Index, would help keep the coverage level at a sufficiently high level to allow the program to function as it was originally intended. It would weed out the fly-by-night operators, while allowing the rest of the industry to continue to provide the traveling public with vacation alternatives of the caliber and value for which the North American cruise industry is known.

We also urge the Commission, in the event it enacts rules eliminating the ceiling, to provide for a one year period prior to the effective date of the initial phase of increased bonding requirements. We believe this period would allow cruise operators sufficient time to implement the necessary arrangements to meet these substantial financial requirements.

NCL strongly supports protections for the traveling public and is prepared to do what is necessary to ensure that reasonable protections are in place. This proposed rule does not strike that balance. Only a full examination of the proposal and its consequences can answer the question of whether it is a reasonable balance of the need to protect the trading public without undue burden on the industry and the traveling public. 'We urge you to undertake that analysis before considering any further action in this matter. We believe the correct conclusion from such an analysis will be to simply increase the ceiling by an amount necessary to reflect the impact of inflation.

We appreciate the opportunity to submit these comments.

Sincerely,

NORWEGIAN CRUISE LINE LIMITED

Hans Golteus
President and Chief Operating Officer

TRANSPORTATION INSTITUTE

5201 Auth Way
Camp Springs, Maryland 20746
(301) 423-3335 (MD)
(202) 347-2590 (Wash., D.C.)
Telecopier (301) 423-0634

Pacific Coast Office
2601 Elliott Avenue
Suite 3105
Seattle, WA 98121
(206) 443-I 738
Telecopier (206) 443-0917

October 15, 1996

Mr. Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, DC 20573

Re: DOCKET No. 94-06

Dear Mr. Polking:

The Transportation Institute represents 140 U.S.-flag shipping companies engaged in foreign and domestic trades. Among our member companies is American Classic Voyages, operator of the nation's premier cruise lines, Delta Queen Steamboat Company and American Hawaii Cruises. The Institute appreciates the concern of the Federal Maritime Commission that passengers are fairly indemnified against failure to provide agreed upon service.

It appears, however, that the approach outlined in Docket No. 94-06 may have the opposite impact and reduce existing consumer protection. The proposal unfairly disadvantages existing U.S.-flag operators while discouraging the development of a healthier U.S.-flag cruise industry. It can also work to reduce the scope of cruise options, both U.S. and foreign-flag, currently available to the U.S. consumer. It must be emphasized for the record that no passenger sailing on a U.S.-flag vessel has lost deposits or fares due to nonperformance of service.

Among the Institute's concerns are the following:

- Cruise vessels embarking U.S. passengers in foreign ports are not required to post performance bonds. Thus, to the extent that this massive increase in bond coverage forces vessels to homeport outside the United States, mandatory

consumer protection for U.S. passengers would be completely removed. Considering the maximum $5 million bonding per ship, the current fleet of foreign ships would have a potential incentive of nearly $700 million to homeport outside the United States. This incentive can be expected to increase to $775$875 million by the year 2000 and would not only inhibit efforts by U.S. ports seeking cruise ship calls/homeporting opportunities, but also diminish the economies of existing U.S. homeports.

- Eliminating the ability for a cruise operator to self insure using assets based in the United States denies passengers a tangible means of insuring the integrity of unearned passage revenue. It also weighs heavily against existing and prospective U.S.-flag operators. Both foreign-flag companies operating internationally and U.S.-flag companies operating in domestic trades must compete for the same U.S. customer base. Foreign-flag operators benefit from generous ship construction subsidies not available to a U.S. domestic operator. To a modest degree, the current ability to self insure has provided U.S. domestic operators with a means to offset this advantage while adequately protecting passenger deposits. As you may be aware, the recent passage of the Coast Guard Authorization Act of 1996 provides the opportunity to add four overnight passenger vessels to U.S. registry. Among the incentives of flying the U.S.-flag is the existing standard which the aforementioned proposal will eliminate. Consequently, the possibility of adding these vessels to U.S. registry will be significantly reduced if this proposal is enacted in its current form.

- Numerous important steps have already been taken and significant efforts are underway to revitalize the U.S. merchant marine. A critical component in this effort is the development of a U.S.-flag cruise fleet. The Title XI ship loan guarantee program has been funded after many years of dormancy. Two recent federal grants under the Maritech defense conversion program for the advanced design and marketing of U.S.-built cruise ships have been made with more expected. Several overnight passenger vessels are under construction and another has recently been delivered. Also included in the Coast Guard Authorization Act are provisions which greatly expand the capital markets which U.S. operators may utilize to construct new U.S.-built and flagged ships. This proposal would negate these opportunities by recognizing an increase in cash reserves from 2 to 10 times existing levels. Cash reserves of this magnitude

would be necessary because opportunities for surety bond alternatives would be drastically reduced if not eliminated entirely. The impact of the proposed requirement will add substantially to the already high capital costs of market entry and the ability to expand the U.S. market share, which the aforementioned efforts are intended to address. Consequently, the result of this proposal is directly in conflict with the clearly stated goals of Congress and the Administration.

- The only companies able to handle the enormously increased capital requirements are the largest, foreign-flag companies which already have dominant market share. This proposal can potentially reduce the spectrum of cruise operators by placing an unfair, and most importantly, unmanageable burden on smaller and mid-size companies. The end result will be fewer options for the consumers the proposal intends to protect.

The Institute strongly opposes this proposal and urges that the status quo be maintained. Implementation at the very least should be indefinitely postponed until a cost-benefit analysis mandated by Executive Order 12866 related to "significant regulator action" is properly conducted.

Sincerely,

James L. Henry

James L. Henry
President

JLH:rf

ORIGINAL

CC: 030
60
50
022

CARNIVAL CORPORATION

RECEIVED
'96 OCT 15 P1:48
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL MARITIME COMMISSION

In the Matter of	)	
Financial Responsibility Requirements	)	**Docket No. 94-06**
for Nonperformance of Transportation	)	
	)	

I. INTRODUCTION

Carnival Corporation ("Carnival") submits the following comments on the proposed rule, "Financial Responsibility Requirements for Nonperformance of Transportation" (Docket No. 94-04). These comments are submitted by Carnival on behalf of Carnival Cruise Lines, Holland America Lines, and Windstar Cruises, all of which are owned by or affiliated with Carnival.

The International Council of Cruise Lines (ICCL) has filed comments separately in this docket. Carnival endorses ICCL's comments. Carnival files comments touching on areas beyond those advanced by ICCL for one reason: we are concerned that the Commission has strayed from the intent and mechanics of the statute regarding financial responsibility for the nonperformance of transportation by passenger vessel operators ("PVO"). The original intent of the financial responsibility statute was to protect passengers from undercapitalized or unscrupulous operators. The industry has matured greatly from the 1960's when the passenger

Carnival Place, 3655 N.W. 87 Avenue, Miami, Florida 33178-2428
Tel: (305) 599-2600 Fax: (305) 471-4758

trades consisted primarily of special purpose chartered voyages on underutilized liner vessels. Indeed, the legislative history indicates that the law was originally intended to address defaults by charter operators and that the law was expanded to address all cruise operators to reduce the administrative burden on the Commission. p. 4182, 3 U.S.C. & A.N. 1966.

The cruise industry of today is a multi-billion dollar industry serving customers worldwide. The vast majority of cruise operators are credit-worthy and financially stable. Those that are not are clearly identifiable through financial reports and other publicly available information. The statute grants considerable flexibility to require information and data to facilitate the identification of PVOs experiencing financial difficulties in order to protect the traveling public.

Carnival believes that the Commission has transformed a flexible statute intended to permit, at least in some circumstances, a relatively informal informational showing of financial responsibility, into a rigid, highly burdensome structure that arbitrarily casts aside the inherent flexibility granted by Congress.

II. THE COMMISSION SHOULD USE THIS RULEMAKING PROCEEDING TO IMPLEMENT THE "INFORMATION" PROVISION OF THE STATUTE

Public Law 89-977 (80 Stat. 1357, 1358) requires Passenger Vessel Operators ("PVOs") to provide the Commission with "information" that establishes the financial responsibility of a PVO. Alternatively, the statute contemplates that the Commission may require a showing of

financial responsibility in the form of bonds, insurance or other monetary security. The statute (codified at 46 U.S.C. § 817e), states:

> No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without first having filed with the Federal Maritime Commission such information the Commission may deem necessary to establish financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

46 U.S.C. § 817e(a). (emphasis added)

The statute is straightforward. It authorizes the Commission to accept either: (1) "information" to satisfy its financial responsibility; or (2) a bond or other security. These are two separate and distinct options. Over the course of the three decades it has administered the statute, the Commission has disregarded this distinction when promulgating regulations and issuing proposed rules. The current and proposed regulations do not provide an "information" option to cruise operators. The Commission has deviated a great distance from Congress's authorization to maintain informational requirements to its establishment of a virtually universal dollar-for-dollar security requirement throughout the industry.

The legislative history of 46 U.S.C. § 817e notes that certain cruise operators at the time of passage of the law were filing evidence of financial responsibility with the Maritime Administration in the form of financial reports and that the Commission had "access" to these reports. p. 4182, 3 U.S.C. & A.N. 1966. This confirms that Congress intended to enable

cruise operators to meet the statutory requirements by simply filing information (e.g., financial reports) to demonstrate financial responsibility for nonperformance of transportation.

The rigidity of the current regulations stems in part from the desire of the Commission and its staff to minimize the amount of oversight necessary to administer the regulations. Based upon both the existing and proposed regulations, the Commission has reduced its administrative obligations primarily to the periodic, mechanical verification of the existence of adequate bonding by industry members. We do not feel that implementation of an "information" alternative to the existing bonding requirements would entail much, if any, additional administrative burden on the Commission's staff. All that would be required is periodic review of financial statements submitted by cruise operators for verification of compliance with predetermined net worth or working capital requirements.

Consequently, Carnival suggests that the Commission re-issue the proposed regulations and include standards for informational filings.

III. COMMENTS ON THE PROPOSED RULE

The Commission's administration of Public Law 89-777 has been progressively restrictive. Through various rulemakings and administrative oversight, the Commission has narrowed the availability of the alternative compliance measures to the point that there are very few options accessible to PVOs. This process of restriction has continued despite the general absence of support in rulemaking records for such restrictions, despite the strong record of the cruise

industry in delivering services to the public, and despite a statute that grants the Commission great flexibility in the administration of its financial responsibility provisions.

The proposed rule limits even further the options available to PVOs. This is true even for the most financially sound members of the cruise industry. The Commission should make substantial revisions to the proposed rules to conform the regulations with statutory intent as well as to ensure that the regulations produce data that provide the Commission with evidence of a PVO's financial condition.

A. THE REDUCED COVERAGE SLIDING SCALE PROVISIONS MUST BE REVISED TO BE MEANINGFUL

1. The Commission Must Re-evaluate its Proposal Regarding Debt Ratings

The Commission proposes to allow an operator to reduce the quantum of its financial responsibility showing if that operator: (1) can demonstrate at least five years of operation in U.S. trades; (2) satisfactorily explains any nonperformance claims; and (3) has a debt rating of Aa or better by Moody's Investor Service.

The first two elements reflect current conditions for reduced coverage. The provision regarding the Moody's Investment Rating, however, is new. The Commission justifies this new criteria on the grounds that it will "give more weight to third-party, marketplace assessments of PVO's financial strength." (61 Fed. Reg. 33063 (1996)). The Commission also asserts that it is being responsive to previous industry comments regarding self-insurance

because the new criteria indirectly rely upon "foreign-based assets as urged by foreign-flag PVO's in connection with self-insurance standards." (61 Fed.' Reg. 33063 (1996)). However, in the absence of accompanying record support or analysis, the Commission's selection of Moody's Aa as the controlling requirement frustrates informed public comment and imposes a needlessly high threshold. If no PVO can meet the standard, the Commission should not rely on the belief that this revision is in any way responsive to "previous industry comments."

Because it arbitrarily fixes an unrealistic bond rating threshold, the Commission's proposal will substantially restrict the applicability of the reduced coverage sliding scale provisions. Neither the rule nor accompanying material reflects any awareness of this restrictive effect. The commenting public is thus left in the dark as to whether the Commission has reasons for these restrictions or whether, instead, it has acted in the mistaken belief that it has permitted wider access to the reduced coverage provisions.

The Commission provides no clue to its reasoning behind the selection of the Aa rating. Currently, no PVOs or their corporate parents have a Moody's rating of "Aa" or its Standard & Poors equivalent, "AA." If implemented, the Commission's proposal will foreclose all PVOs from reducing coverage, even when a PVO demonstrates years of satisfactory service to the U.S. market and fully explains all non-performance claims.

An appropriate bond rating threshold should not be so high as to preclude financially stable operators from qualifying, or so low as to allow financially weak operators to reduce their coverage requirements. Accordingly, Carnival respectfully submits that the Commission

should permit companies with a Moody's bond rating of "Baa" or better, or Standard & Poors rating of "BBB" or better, to qualify.

A Moody's "Baa" or a Standard & Poors "BBB" rating generally indicates an investment grade bond from a company that has acceptable asset coverage and satisfactory earnings. Such bonds qualify for commercial bank investments. Consequently, a "Baa" or "BBB" rating indicates that the issuing company is in sound financial condition. For example, Carnival, an investment grade rated corporation ("A2" Moodys, "A" S&P), has the ability to borrow up to $1 billion in the commercial markets without posting any assets, domestic or foreign, as security. The list of investment grade companies that do not satisfy the Commission's unnecessarily restrictive Aa rating threshold includes such financial stalwarts and household names as General Motors, Disney, Dow Chemical and Sears Roebuck.

A rating criterion at the investment grade level would imbue the reduced coverage requirements with some real world application and would, at the same time, be consistent with the protective purposes of the statute. The record of this rulemaking offers no evidence that the Commission requires a higher threshold of financial strength to reach a determination of "financial responsibility" than commercial lending institutions require to advance unsecured loans of similar or greater magnitude.

2. The Commission Must Broaden the Definition of "Applicant" in implementing the Reduced Coverage Provisions

If a bond rating criterion is adopted in any context in the regulations, the Commission should consider not only the "applicant's" bond rating, but that of corporations related to the applicant as well. Many PVO "applicants" are subsidiaries of larger corporate parents. For assorted financial reasons, a PVO may operate more than one "applicant. " In some instances, for reasons unrelated to the financial viability of the companies, the parent corporation has a bond rating while the subsidiary "applicant" does not.

Consequently, if the Commission does establish a bond rating threshold to justify a reduction in required coverage, the Commission should expand its definition of "applicant" to include bond-issuing related companies within a corporate family. If the Commission does not adopt this recommendation, major PVOs will be unable to qualify for reduced cover even when they are members of a corporate family whose debt instruments enjoy strong ratings and a demonstrated history of superior performance.

Carnival recognizes that any use of a parent corporation's bond rating to support a determination of financial responsibility of a subsidiary or affiliate carries with it a corresponding obligation to guarantee the UPR of the subsidiary or affiliate. Carnival would therefore support a corollary requirement that conditions Commission reliance on the rating of a parent/affiliate upon that related company assuming responsibility for the UPR in the event of nonperformance of transportation.

B. PROPOSED CONDITIONS RENDER THE SELF-INSURANCE OPTION -- ILLUSORY

1. Current Self-Insurance Standards Need to be Revised to Reflect Current Industry Conditions

The Commission thus far has ignored the viewpoints of the vast majority of commentators in this rulemaking proceeding and similar proceedings regarding the need to develop self-insurance requirements that have real-world vitality. The Commission rejects expanding the availability of this form of financial responsibility, and in fact, proposes to restrict its further use.

Under current regulations, self-insurance is available to those operators who "demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trades of the United States." 46 C.F.R. § 540.5(d). The Commission makes available the use of self-insurance to those operators that: (1) have a minimum of five years of operation in the United States; (2) can satisfactorily explain any claims for nonperformance; (3) provide the Commission a list of contractual obligations and encumbrances; and (4) maintain a net worth in the amount of financial responsibility.

The Commission requires a PVO's net worth to be physically located in the United States. In the proposed rulemaking, the Commission intends to continue this requirement. The Commission further proposes to require both "net worth and working capital" in the amount of

financial responsibility and to require an additional 25 per cent of the UPR to be backed by a guaranty, surety bond, insurance or escrow account.

The geographic characteristics of the modern U.S.-based cruise business dictate that, for the vast majority of cruise providers, their principal assets, vessels, are outside U.S. territorial waters for significant portions of time. The Commission also takes the position that U.S.-based, but not U.S.-registered vessels, are not "physically located in the United States." Thus the U.S.-situs provisions of the Commission's regulations and proposals have the effect of destroying the real-world utility of the self-insurance alternative. Modern cruise vessels nonetheless must call U.S. ports extremely frequently and are fully subject to local process while in the United States .[1]

2. Congress Supports Wider Employment of the Self-Insurance Option

In 1993 Congress amended Public Law 89-777 to remove the requirement that bonds or other security "be in the amount paid equal to the estimated total revenue for the particular transportation." (Public Law 103-206, § 320, Dec. 20, 1993, 107 Stat. 2427). An earlier comment to this docket provides some illumination as to the purpose of the amendment.

---

[1] The "U.S.-situs" provision of the rules not only is unrealistic given the necessary frequency of vessel calls in the United States and the relatively uniform conventions governing vessel arrest worldwide, but also is inconsistent with the Commission's willingness to accept offshore insurers, sureties and guarantors as sources of evidence of financial responsibility. The modern reality is that national boundaries are generally not significant barriers to fulfillment of financial commitments or satisfaction of claims.

This 1993 revision to the law was made because the Commission "asked this Committee to amend the original statute to provide you with greater flexibility in determining financial responsibility of cruise operators so as to meet the changing needs of the industry." (Letter of Gerry T. Studds, et al., June 24, 1994). "This Committee" is a reference to the House Merchant Marine and Fisheries Committee, then the authorizing Committee for the Commission. The letter was signed by the Democratic and Republican leaders of that Committee.

The letter also criticizes the Commission for proposing to tighten, not ease, the financial responsibility burden. The letter strongly urged the Commission to maintain, and to make more widely available, the self-insurance option. The Commission, on the record of this proceeding, has yet to explain cogently why it refuses to take this course of action.

3. The U.S.-based Asset Requirement should be Dropped and the Commission should instead Evaluate the Overall Financial Condition of the Operator

The Commission should revise its regulations to reflect current industry conditions and operations. Basing regulations on nonexistent problems or improbable circumstances does not do the industry, the public, or the Commission, any good.

The Commission is urged to remove the U.S.-only asset test. To qualify for self-insurance, the Commission should instead consider the overall financial strength, and likelihood of default, on all or a portion of a PVO's UPR. This test is particularly applicable

ORIGINAL

CC: 030
60
50
022

Before the
FEDERAL MARITIME COMMISSION
Washington, D.C. 20573

RECEIVED
'96 OCT 15 P5:17
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	Docket No. 94-06
Financial Responsibility Requirements	)	
for Nonperformance of Transportation	)	

To: The Commission

COMMENTS OF INTERNATIONAL COUNCIL OF CRUISE LINES

I. INTRODUCTION

The International Council of Cruise Lines (the "ICCL") hereby respectfully submits its Comments regarding the above captioned matter on behalf of its members. ICCL is a non-profit trade association whose member lines[1] represent the vast majority of the cruise industry berth capacity for passengers embarking from U.S. ports. ICCL and its predecessor organization have represented the cruise industry since 1968. ICCL's member lines will be directly affected by the Federal Maritime Commission's (the "Commission") decision in this proceeding and, therefore, ICCL's interest in this matter is clearly established.

[1] The ICCL member lines are Carnival Cruise Lines; Celebrity Cruise Lines; Commodore Cruise Line; Costa Cruise Lines NV; Crystal Cruises; Cunard Line Ltd.; Disney Cruise Line; Dolphin Cruise Line; Holland America Line; Majesty Cruise Line; Norwegian Cruise Line; Princess Cruises; Regal Cruises; Royal Caribbean Cruises, Ltd.; Royal Olympic Cruises, Ltd.; Seabourn Cruise Line; and Windstar Cruises.

II. BACKGROUND

This proceeding originally was instituted in 1994 when the Commission proposed, *inter alia,* to remove the $15 million UPR coverage ceiling contained in the current rules.[2] ICCL responded to the Commission's Notice of Proposed Rulemaking (the "1994 Proposed Rule") by filing a letter dated June 24, 1994, from ICCL's then-President, Mr. John T. Estes. ICCL stated its support for the Commission's proposal for increased financial responsibility. However, ICCL also proposed several adjustments to eliminate or revise several features of the proposed regulations that would impact the financial obligations of cruise operators and that ICCL believed were impractical or unnecessary to assure financial responsibility. Specifically, ICCL urged the Commission to reinstitute self-insurance and to make the self-insurance option reasonably available to creditworthy operators by eliminating the requirement in the self-insurance provisions that all assets be located in the U.S. In addition, ICCL requested changes to the net-worth requirements. ICCL also proposed that companies be allowed to meet the bonding and self-insurance tests on a consolidated basis. Comments on the 1994 Proposed Rule also were filed by 11 other interested parties.[3]

In October 1994, the Cornmission suspended the instant proceeding pending formal Inquiry to determine whether an acceptable alternative to the 1994 Proposed Rule could be fashioned.[4] In particular, the Commission requested comments on strengthened self-insurance

---

[2] 59 F.R. 15149 (March 3 1, 1994).

[3] 61 F.R. 33059, 33060 (June 26, 1996)

[4] Docket No. 94-2 1, Inauirv into Alternative Forms of Financial Resnonsibilitv for Nonperformance of transportation, 59 F.R. 52133 (October 26, 1994).

requirements and the possible utilization of voluntary associations. ICCL filed comments in response to that Inquiry by letter from Mi-. Estes dated November 28, 1994. ICCL reiterated its view that modern day commercial reality does not require that all assets be located in the United States for self-insurance by creditworthy operators to be meaningful and adequate. In particular, ICCL noted that by maintaining the overly narrow domestic asset requirement, the Commission would practically foreclose the option of self-insurance to the entire industry.

In June of this year, the Commission decided to proceed with this rulemaking pursuant to a Further Notice of Proposed Rulemaking[5] and in July suspended the Inquiry.[6] As stated in the NPR, the Commission "believes that it must now proceed to revise its coverage requirements to narrow the gap between coverage and UPR as a means of enhancing protection for the public."[7]

While ICCL supports continued passenger protections, the membership expresses no position on the issues of the amount of the bonding requirement or the proposed phase-in periods. However, as explained below, ICCL believes that the proposed rules go well beyond that which is necessary to establish financial responsibility and beyond what the facts that have been established in this proceeding will support.

The ICCL and its member lines would like to reiterate that the performance of the industry in more than twenty-five years since the enactment of Public Law 89-777 is strong

---

[5] 61 F.R. 33059 (June 26, 1996) (hereinafter cited as "NPR").

[6] 61 F.R. 39940 (July 31, 1996)

[7] 61 F.R. 33059, 33063

testimony to the industry's stability and its high sense of responsibility to the public. Over the years, the Commission's passenger bonding program has enabled the industry to provide an adequate level of protection to its cruise passengers.

The Commission's proposed rule attempts to differentiate financial responsibility requirements based on an operator's financial rating. Although the Commission's proposed self-insurance option and reduced coverage sliding scale option purport to offer such alternatives for low-risk operators, the reality is the proposed rules foreclose the possibility that these options could ever be used by any financially stable operator. As proposed, both the self-insurance and the reduced sliding scale coverage provisions are so restrictive that neither presents a viable option to low-risk operators. The proposed U.S.-based asset requirement eliminates the self-insurance option for foreign-flagged lines (i.e., virtually the entire industry) and the excessive "Aa" Moody's rating requirement eliminates all ICCL member lines from qualifying for the reduced coverage sliding scale. Suggestions have been made by ICCL and others to make those provisions meaningful and at the same time provide adequate protection to the public. ICCL believes the Commission must give further consideration to those suggestions. Consequently, ICCL would like to reiterate several proposed adjustments to the rules that would achieve a balanced regulatory approach, eliminate unnecessary burdens on the operators, which ultimately must be borne by the passenger public, and make several features of the proposed rules meaningful in a practical sense.

III. COMMENTS

A. THE REDUCED COVERAGE SLIDING SCALE PROVISIONS NEED REVISION TO BE MEANINGFUL

1. An Investment Grade Rating, Rather Than The Excessive "Aa" Rating, Should Be The Qualifying Standard.

The Commission has proposed that the reduced coverage sliding scale would be available to operators if they can provide: (1) evidence of at least five years of operation in U.S. trades, (2) a satisfactory explanation of any nonperformance claims, and (3) a debt rating of "Aa" or better by Moody's Investors Service. ICCL agrees that the debt rating of a cruise line by Moody's, and similar recognized rating services, is a measure of a cruise line's financial strength and can be used to determine the levels of coverage that should be required. However, it should be noted that these ratings are subjective and extremely sensitive to the volatility of the debt market. Furthermore, the Comrnission's proposed use of this high-grade "Aa" debt rating for determining an operator's eligibility to use the reduced coverage sliding scale is an impractical standard especially in light of the high levels of coverage that would still be required under the reduced coverage sliding scale. ICCL believes it is unlikely that any cruise line operator would be able to qualify for such a rating. Despite the fact that many of ICCL's member lines are large, well capitalized companies, several of which are publicly traded, none of ICCL's member lines would qualify under the restrictive "Aa" standard.

There is nothing in the record to indicate how the Commission arrived at its proposal to use an "Aa" rating.' Upon closer examination of the criteria required to achieve an "Aa" rating, it is unlikely that any cruise line operation will qualify for an "Aa" rating.[9] By requiring a debt rating at the "Aa" high-grade level, the Commission will render the reduced coverage sliding scale unusable by cruise line companies. Thus, ICCL urges the Commission to change the acceptable debt rating level proposed in the NPR to an investment grade rating, which we are advised is a rating of "Baa3" or higher.[10] By changing the proposed debt rating requirement to an investment grade rating, the Commission would make the reduced coverage sliding scale a viable option, available to financially stable cruise line companies, and continue to protect the interests of the cruising public.

---

[8] The record also is not clear as to why the Commission has identified Moody's Investment Services as the sole source of the qualifying debt rating. It is our understanding that a Moody's debt rating is an opinion derived from an assessment conducted at the request of the company being evaluated. On occasion, Moody's may perform an unsolicited evaluation of an individual company or an entire industry, but to our knowledge, has not performed one on the cruise line industry. Companies other than Moody's also exist to provide debt rating assessments, such as Standard & Poor's Corporation, Fitch Investors Service, L.P., and Duff and Phelps Credit Rating Company. These companies also provide rating services judged by the market to be reliable and credible. Therefore, ICCL recommends that the Commission allow a cruise line to select its own rating service company if the cruise line elects to qualify for the reduced coverage sliding scale option.

[9] See, Moody's Rating Definitions, Moody's Investors Services; Lithograph, 1994

[10] The investment grade ratings represent bonds which possess adequate investment attributes. Factors giving security to principal and interest also are considered adequate. The investment grade rating focuses on measuring long-term risk and an issuer's ability to meet debt payments.

2. An Operator Should Be Allowed To Qualify For The Reduced Coverage Sliding Scale On The Basis Of The Financial Standing Of Its Parent Comnanv

ICCL proposes that the Commission include an option permitting the operator to qualify for the reduced coverage sliding scale based on the debt rating of its parent or ultimate parent company. Some cruise companies, which may not be rated individually or which would not qualify for an investment grade rating on their own are owned by companies that have the appropriate investment grade or higher rating. ICCL believes that such companies should be able to qualify for the reduced coverage scale because the consolidated financial standing of such companies is a very good indication of the general credit worthiness and financial stability of the company. As the Commission well knows, in many cases involving guaranties or bonds from Protection and Indemnity Clubs, the consolidated financial resources of the company ultimately make possible the issuance of the bond or guaranty. Consequently, ICCL asserts that an operator should be able to qualify for the reduced coverage sliding scale on the basis of the consolidated debt rating of the operator's parent or ultimate parent company.

B. THE SELF-INSURANCE PROVISIONS NEED REVISION TO BE MEANINGFUL

1. Net Worth And Working Capital Should Not Be Limited To U.S.-Based Assets.

ICCL wishes to reemphasize its position expressed in previous Comments that foreign-based assets should be considered by the Commission for purposes of qualifying for self-insurance. These assets are not unavailable to U.S.-based creditors and form part of the working capital of modern operators. In particular, the operator should be able to include the value of its foreign-flag vessels when calculating net worth. These are the very vessels which trigger the

bonding requirement and embark passengers in U.S. ports. Furthermore, the assets, while not permanently located in the United States, are easily attached. If the presence of the vessels in the U.S. is sufficient enough to allow the Commission's rules to apply to them, then a vessel's presence should be sufficient to include it in the calculation of net worth pursuant to such rules.

The fact of the matter is that qualification for self-insurance is virtually impossible if an operator is limited to U.S.-based assets. The cruise industry, like many other industries, is an international industry by its very nature. ICCL is mindful of the Commission's concerns about the availability of assets to satisfy unearned passenger revenue if those assets are not located in the United States. Consequently, in its June 14, 1994 Comments, ICCL proposed that instead of rejecting any consideration of foreign-based assets outright, the Commission should consider ways of allowing operators to utilize their foreign-based assets to demonstrate the ability to self-insure by incorporating other tests into the self-insurance qualification standards. In particular, ICCL proposed that the demonstration of tangible net worth be increased from 110% of UPR to 300%. ICCL also proposed that a liquidity test (cash plus uncommitted credit facilities) be instituted in the amount of 100% of the first $25 million of UPR and 50% of UPR above $25 million (without restriction on location of funds in the U. S .).[11]

The point is that the Commission should not make self-insurance an impossible alternative to an industry whose assets by definition are not permanently located in the United States. For purposes of enforcing the Commission's regulations, cruise lines are subject to the

[11] See, ICCL Comments, Docket No. 94-06, June 24, 1994, p.5.

jurisdiction of the United States.[12] ICCL urges the Commission to accept that economic reality of the cruise line industry and look beyond the location of the assets to determine how creditworthy and financially stable cruise line operators can qualify for self- insurance.

The Commission previously has dismissed this approach by stating "unless passengers have the ability to attach a defaulting carrier's assets, self insurance under any standard is problematic."[13] Vessels not in the U.S. are attachable and routinely are attached.[14] Furthermore, the Coast Guard accepts insurance and other evidence of financial responsibility, for amounts far greater than those under consideration here, from insurance companies whose assets are not located in the United States.[15] Obviously, considerations other than only the location of assets were taken into account by the Coast Guard in determining whether guaranties backed by foreign-based assets were acceptable.

ICCL requests that the Commission also take into consideration factors other than only the location of the assets and consider other financial indicia for the purpose of determining whether a company should qualify for self-insurance. Congress specifically stated that cruise line

---

[12] See, Section 3, Pub. L. 89-777, 46 USC App. §817e, (c-d). The Commission's jurisdiction in this regard extends to those persons in the United States who arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports.

[13] 61 F.R. 33059, 33062.

[14] See, USC Admiralty and Maritime Claims Rules (1996), Supplemental Rules for Certain Admiralty and Maritime Claims, for purpose and procedures for writ of foreign attachment in admiralty.

[15] Most of the "guaranties" evidencing financial responsibility for oil pollution for oil tankers under the Oil Pollution Act of 1990 are issued by Bermuda-based insurance companies for amounts up to $500 million.

operators may file

> "such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation . . ."

apart from a bond, guaranty or other security for indemnification of passengers for nonperformance.[16] The Commission must not deny cruise line operators their statutory right to establish financial responsibility by filing relevant information with the Commission. The statute states unequivocally that cruise lines should be permitted to demonstrate their financial responsibility in ways other than through bonds or other securities. Consequently, the Commission should adopt the ICCL proposals to make the self-insurance provisions meaningful and workable.

2. An Operator Should Be Allowed To Qualify For Self-Insurance On The Basis Of The Financial Standing Of Its Parent Comnanv

ICCL proposes that the Commission include an option permitting the operator to qualify for self-insurance based on the consolidated assets of the operator or operator's parent or ultimate parent company. Some cruise companies, which may not otherwise qualify for self-insurance are owned by companies that have adequate assets to qualify for self-insurance. ICCL believes that companies should be able to qualify for self-insurance on the basis of the consolidated assets of the operator or the operator's parent or ultimate parent company.

---

[16] Section 3, Pub. L. 89-777, 46 USC App. §817e(a). This statute was enacted to establish financial responsibility for indemnification of passengers in the event of nonperformance of transportation.

3. The "Working Capital" Reauirement For Self-Insurance Should Be Eliminated

To qualify for self-insurance, the Commission proposes to require an operator to demonstrate that its net worth and working capital are each equal to the UPR. The operator also would have to provide an additional guaranty or bond to qualify for self-insurance. ICCL asserts that the working capital requirement is unnecessary and excessive. No operator could meet such a requirement. ICCL proposes instead that a liquidity test, such as proposed in its June 24, 1994 Comments,[17] should be used instead of a working capital test.

4. The Reauirement For Self-Insuring Operators To Obtain A Traditional Guaranty, Surety Bond. Insurance Or Escrow For 25% Of UPR Should Be Eliminated.

ICCL asserts that the proposed requirement to provide a guaranty, surety bond, insurance or escrow account for 25% of UPR in addition to meeting the other qualifications for self-insurance is excessive and unnecessary. The operators that qualify under the Commission's standards for self-insurance should not be expected to meet an additional financial burden of having to obtain a traditional guaranty, surety bond, insurance, or escrow for 25% of the line's UPR. This is an unnecessary cost which ultimately will be borne by the traveling public -- with no additional benefits or protections.

C. PARENT OF OPERATORS SHOULD BE PERMITTED TO EVIDENCE FINANCIAL RESPONSIBILITY FOR ALL OF ITS AFFILIATED OPERATORS BY ONE GUARANTY, ESCROW ARRANGEMENT, SURETY BOND, INSURANCE, OR SELF-INSURANCE APPROACH.

ICCL restates its proposal made in previous Comments,[18] but which was not

[17] *Supra,* note 10.

[18] ICCL Comments to the Commission, Docket No. 94-06, November 28, 1994.

subsequently addressed by the Commission, that two or more operators with a common ownership be allowed to apply for and provide one form of financial responsibility for a consolidated UPR. Such a measure would be similar to the provisions of the Coast Guard's financial responsibility regulations implementing the Oil Pollution Act of 1990[19] which allow fleet consolidation. Such a provision would not diminish the amount or scope of the protection to the traveling public, but would allow affiliated operators to consolidate their UPRs in order to meet the Commission's financial responsibility requirements. In addition, such a requirement would reduce the administrative burden of the Commission and the operators.

IV. CONCLUSION

ICCL 'and its member lines stand on their exemplary record for providing the traveling public with safe, affordable, quality cruise travel. Over the years, the Commission's passenger bonding program has enabled the industry to provide an adequate level of protection to its cruise passengers. While the ICCL supports continued passenger protections in this area, it believes that the Commission's proposed rule goes well beyond that which is necessary to establish financial responsibility. To remedy this discrepancy, the ICCL has proposed several significant changes for the Commission's consideration. ICCL firmly believes that these changes address the practical concerns of its member lines, while fully maintaining adequate passenger protections.

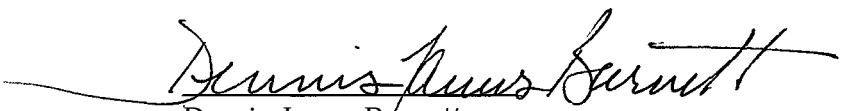
---

[19] Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (codified as amended at 33 U.S.C. §§2701-2761 (Supp. II 1990)). OPA requires responsible parties to demonstrate financial responsibility for potential environmental damages brought by oil spills.

Although the Commission's proposed self-insurance option and reduced coverage sliding scale option purport to offer financial responsibility alternatives for low-risk operators, the reality is that the proposed rules foreclose the possibility that these options could ever be used for their intended purpose. The Commission's proposal as it stands would raise the protective standards to a level that may require the industry to limit the cruise options available to the traveling public. ICCL's proposed amendments would make the Commission's standards more meaningful and eliminate unnecessary regulations. Furthermore, these amendments would continue to assure adequate passenger protections.

ICCL and its members reaffirm their obligation to passengers and urge the Commission to incorporate the changes set forth in these Comments, in the event the Commission proceeds with adopting any new rules.

Respectfully submitted,
PIERSON & BURNETT, L.L.P.



Dennis James Burnett
David L. Lihani
Attorneys for ICCL

Of Counsel:

Pierson & Burnett, L.L.P.
1667 K Street, N.W.
Suite 801
Washington, D.C. 20006

Phone: (202) 466-3044
Fax: (202) 466-3055

October 15, 1996

CC:020/030
60
50

ORIGINAL

Before the
FEDERAL MARITIME COMMISSION
Washington, D.C.

FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION Further Notice of Proposed rulemaking (61 Fed. Reg. 33059)	Docket No. 94-06

COMMENTS OF AMERICAN CLASSIC VOYAGES CO.

William N. Myhre
PRESTON GATES ELLIS
& ROUVELAS MEEDS
1735 New York Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 628-l 700

Attorneys for
American Classic Voyages Co.

Date: October 15, 1996

Before the
FEDERAL MARITIME COMMISSION
Washington, D.C.

FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION Further Notice of Proposed Rulemaking (61 Fed. Reg. 33059)	:	Docket No. 94-06

COMMENTS OF AMERICAN CLASSIC VOYAGES CO.

INTRODUCTION

American Classic Voyages Co. ("AMCV" or the "Company"), submits these comments in response to the Further Notice of Proposed Rulemaking in the above-referenced docket, as published by the Federal Maritime Commission (the "Commission") on June 26, 1996 (the "1996 Proposed Rule"). 61 Fed. Reg. 33059. AMCV is the corporate parent of The Delta Queen Steamboat Co. ("Delta Queen") and American Hawaii Cruises ("AHC") and the largest operator of U.S. flag passenger vessels. The Company has Performance Certificates issued by the Commission covering all of its vessels and is the only commercial operator qualifying for self-insurance under the Commission's current regulations. As such, AMCV has a very direct interest in the outcome of this rulemaking.

The Company filed detailed comments on June 24, 1994 in response to the initial Notice of Proposed Rulemaking ("the 1994 Proposed Rule") in this docket. 59 Fed. Reg. 15149. Those comments remain equally relevant to this phase of the rulemaking, and the Company requests that the Commission continue to include them in its consideration of the issues raised by this proposal.[1] Where specific reference is made to these initial comments below, they are referred to as "AMCV 1994 Comments".

[1] AMCV also submitted comments in response to the Commission's Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation in Docket No. 94-21, which

BACKGROUND OF AMERICAN CLASSIC VOYAGES CO.

The Company is a Delaware corporation listed on the NASDAQ Stock Exchange, and is the leading provider of overnight passenger cruises within the continental United States and among the Hawaiian Islands. AMCV operates Delta Queen with three U.S.-flag vessels, the *Delta Queen,* the *Mississippi Queen,* and the new *American Queen.* Collectively, these vessels have over one thousand total passenger berths and provide three to twelve-night paddle-wheel driven steamboat cruise vacations on the Mississippi, Ohio, Cumberland, Atchafalaya and Tennessee Rivers. Delta Queen's sister company, AHC, operates the U.S.-flag vessel *Independence* in Hawaii with over one thousand passenger berths and provides seven-night cruises among the Hawaiian Islands.

Delta Queen and AHC have been active participants in the proceedings undertaken by the Commission in this docket and in its antecedent rulemakings. In addition, the Company has been careful to inform the Commission and its staff of major corporate acquisitions and vessel deployment decisions, such as the acquisition of AHC in 1993, the construction of the *American Queen* and the modernization/conversion of the *Independence.* The long-term financing of both of these shipyard projects, totaling some $100 million, is guaranteed by the United States Government under Title Xl of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1271 et seq.

---

proceeding has since been discontinued. 61 Fed. Reg. 39940 (July 31, 1996). AMCV incorporates those comments by reference herein and requests that they be considered part of the record in this docket as well.

DISCUSSION

I. THE 1996 PROPOSED RULE AGAIN EXCEEDS THE ORIGINAL INTENT OF CONGRESS WITH RESPECT TO PERFORMANCE CERTIFICATES AND IS NOT WARRANTED BY NEW CIRCUMSTANCES OCCURRING SINCE ADOPTION OF THE CURRENT RULE.

If adopted, the 1994 Proposed Rule would have dramatically reversed the Commissions current rules with regard to the issuance of Performance Certificates to passenger vessel operators evidencing financial responsibility. This reversal would have been achieved by eliminating both the $15 million ceiling on coverage for loss of Unearned Passenger Revenue ("UPR") due to operator default as well as removing the option to evidence financial responsibility through self-insurance. Those proposed changes were met with "virtually unanimous support for the current rules and widespread questioning of the need for the 1994 Proposed Rule.,' 61 Fed. Reg. at 33060. As a result, the Commission explored other methods of establishing financial responsibility* before deciding to seek comments on the 1996 Proposed Rule.

Although the revised proposal retains self-insurance and offers a sliding scale option, it also adds new requirements which are themselves so burdensome as to virtually deny either option to any current operator. The result is that the 1996 Proposed Rule is just as objectionable as the 1994 version.

A. The unambiguous statutory purpose of the Performance Certificate program is to establish financial responsibility thresholds to eliminate "fly-by-night" operators, not to guaranty dollar-for-dollar passenger reimbursement.

Section 3 of Public Law 89-777 provides the statutory basis for the Commission's rules. As detailed in AMCV's 1994 Comments, when enacting that law Congress contemplated a statutory scheme to protect the traveling public from "fly-by-night" operators of "questionable financial responsibility" but without financially over-burdening reputable vessel operators. The language of the statute, its legislative history, the 1993 amendments, and many years of Commission investigation and rulemaking all support the central principle that evidence of financial responsibility, not financial guaranties, is what the statute requires. See AMCV 1994 Comments at pp. 10 -18.

This statutory purpose is perhaps best summarized by correspondence from the Chairman of the Commission to the Chairman of the relevant House Committee at the time that an amendment to P.L. 89-777 was under consideration which eventually deleted language from the Public Law that

[2] Docket No. 94-21 (59 Fed. Reg. 52133).

otherwise could have been read to require dollar-for-dollar coverage. In that letter, the Commission's Chairman wrote:

> The Commission's position has been to interpret the statute as not requiring this result [100% UPR coverage under a surety bond]. The 100% or "dollar-for-dollar" bonding requirement would be excessively costly for large passenger vessel operators, whose operations were no% the primary objective of the legislation. The legislative history of P.L. 89-777 suggests that Congress" intent was to protect the passenger public from unscrupulous under-financed operators who would be most likely to strand paying passengers and who would lack the resources to reimburse them.[3]

Nonetheless, the 1996 Proposed Rule goes well beyond what is required to evidence financial responsibility and instead imposes a guaranty of virtually all an operator's UPR. For operators with up to $50 million in UPR, the proposal requires 100% dollar-for-dollar guaranties for all passengers and for those operators with up to $100 million in UPR the requirement for 87.5% coverage is nearly as stringent,[4] and clearly goes beyond what Congress intended. In fact, the burden on current operators would be so significant that implementation of the proposed rule could trigger the very economic crisis and resulting nonperformance of transportation that it seeks to guard against.[5]

B. There is no basis in fact for reversing the current rules, particularly as no passenger has ever been without coverage and where the proposed rule imposes an enormous economic burden on the cruise industry.

A fundamental, continuing concern with the series of rulemakings in this docket remains the near total absence of the kind of in-depth investigation and analysis that has gone into prior Commission action with respect to these Performance Certificate regulations.[6] These rules have profound effects on the

---

[3] Letter from Commission Chairman Christopher Koch to Merchant Marine and Fisheries Committee Chairman Walter Jones dated February 28, 1992, as reproduced in Hearing Record on H.R 4156, a bill to authorize appropriations for the Federal Maritime Commission for fiscal year 1993 – Serial No. 102-59 (February 6, 1992) at pp. 93-6.

[4] In his Congressional testimony in support of the 1993 amendments, eliminating the only language in the statute that could have been read to require dollar-for-dollar coverage, former Commission Chairman Hathaway (who himself was a member of Congress when P.L. 89-777 was enacted) testified that removal of the cap could increase coverage for a single company to as much as $100 million which would be "far beyond what the Congress actually intended." AMCV 1994 Comments at p. 13.

[5] AMCV 1994 Comments at pp. 3-4; 46-52.

[6] The current regulations, as they concern the issues discussed in these comments were developed over a period of three years involving four separate docketed proceedings (Docket

ability of passenger vessel operators to conduct business in the United States and should no% be undertaken without a full understanding of the consequences – including both the benefit, if any, to the traveling public as well as the economic impact on the cruise ship industry.

An agency has an affirmative obligation to provide a reasoned analysis for a proposed change before reversing a long-standing regulation, as the 1996 Proposed Rule unquestionably does. See discussion of case precedent in AMCV 1994 Comments a% pp. 27-9. Moreover, where, as is the case with the 1996 Proposed Rule, an agency proposes "significant regulatory action",[7] Executive Order 12866 calls for a reasoned assessment of the costs and benefits of the proposed regulation.' Similarly, where a "major rule" is involved, as it is here, Congress now takes a particular interest in the impact on the regulated parties. Indeed, recently passed legislation delays the effectiveness of such rules -- including those of independent regulatory agencies such as the Commission -- in order to give Congress the opportunity to disapprove them before the regulated parties invest the significant resources necessary to comply with a new agency rule to which Congress objects.[9]

Although the Commission undertook a detailed analysis in developing the current regulations,[10] it has consistently declined to do so in drafting the proposed rules before it in this docket. In fact, in earlier dockets the Commission specifically examined the question of whether it should undertake a major rule analysis before adopting a final rule." Nonetheless, here the Commission has

---

Numbers 90-I; 91-32; 92-19; and 92-50) as well as a full fact-finding investigation, including field hearings (FF-No. 19).

[7] Under E.0.12866 "significant regulatory action" means any regulatory action that is likely to result in a rule that may have "an annual effect on the economy of $100 million or more" or adversely affect, among other things, competition. Although independent regulatory agencies are not otherwise required to follow all of the provisions of E.O. 12866, the Office of Management and Budget (OMB) has requested voluntary compliance. Memorandum for Heads of *Executive Departments and Agencies, and Independent Regulatory Agencies RE: Guidance for Implementing E.O.* 12866 from Sally Katzen, Administrator, Office of information and Regulatory Affairs, OMB (October 12, 1993).

[8] Those portions of E.O. 12866 that apply to independent regulatory agencies such as the FMC, include the development of the Unified Regulatory Agenda and the requirement that the agency prepare a summary of each planned significant regulatory action including, to the extent possible, "alternatives to be considered and preliminary estimates of the anticipated *costs and benefits*;" Section 4(c)(l)(B) (emphasis added). Although characterizing this rulemaking as "other significant" in its report on the Regulatory Agenda, the Commission nonetheless failed to follow this directive to estimate the costs and benefits of the proposed rule. 61 Fed. Reg. 23997(May 13, 1996).

[9] Public Law 104-121, Subtitle E (Congressional Review of Agency Rulemaking).

[10] See note 6 at p. 4.

[11] See, for example, 55 Fed. Reg. 1850; 55 Fed. Reg. 34564, 34567; 57 Fed. Reg. 47830, 47832; 57 Fed. Reg. 62479, 62480 in which the Commission specifically considered whether the proposed action relating to the Performance Certificate regulations constituted a "major rule" and each case concluded that it did not. In the current docket no similar assessment has been made

been silent, notwithstanding express requests to perform the more thorough analysis in this docket from Members of Congress as well as from the industry.[12] Whereas earlier rulemakings may no% have constituted "significant regulatory action" within the meaning of applicable regulations, the rules proposed in this docket clearly do, making the need for careful evaluation – including a cost-benefit analysis -- all the more important. Indeed, as suggested below, it is highly questionable whether the proposed rule in its current form could withstand such an analysis.

1. The proposal fails to explain the need for a new rule.

The Commission analysis underlying the 1996 Proposed Rule, such as it is, simply fails to acknowledge the significance of one central and unalterable fact: *there has not been a single passenger who has been unable fo recover funds for fhe nonperformance of transportation in fhe 30 vears since fhe sfafufe was enacted.* Quite simply, the statute has worked very well. Importantly, it has eliminated the fly-by-night operators it was intended to protect against. Given this critical fact, the agency must meet a high burden of proof to demonstrate that the enormous cost being imposed on the cruise industry by the proposed rule is justified by *additional* benefits for the traveling public which to date has enjoyed complete protection. The agency has no% me% this burden.

As the basis for its proposed rule the Commission noted an "increased exposure to risk of the traveling public's deposits and prepaid fares" citing a $700 million "shortfall" between the evidence of coverage on file with the Commission and the total estimated UPR in the industry. The underlying premise in this rationale is misplaced. Firs%, the purported shortfall only makes sense where there is a statutory requirement for full coverage. But, as noted above, and as the Commission has repeatedly acknowledged, the program's purpose is not to provide dollar-for-dollar guaranties, but rather to establish only a threshold test. Moreover, there is no relation between the *risk of* loss of UPR and the *size* of the so-called "gap" between the current $15 million ceiling and the total industry-wide UPR. The obvious reason for this lack of a causal relation is simply that no% every operator will go out of business or otherwise fail to perform transportation

---

as to whether the proposed change constitutes a "significant regulatory action" (the functional equivalent of a "major rule" under the current Executive Order).

[12] See, *for example,* Joint comments from the Chairmen and Ranking Minority Members of the U.S. House of Representatives Full Committee and Subcommittee of jurisdiction, dated June 24, 1994 ("[W]e . . . urge you to undertake a complete cost-benefit analysis of the full impact of these proposals in an effort to balance the protection of the consumers' dollars against the impact on the cruise industry and the related jobs and businesses here in the United States. We also urge you to make as thorough and reasoned a study of the issues now as you did when you adopted the current regulations that these new proposals would overturn.") . The Commission acknowledged this position in its summary of the comments to the proposal in its subsequent Notice of Inquiry ("In addition, a number of commenters urge the Commission to perform a cost/benefit analysis on the Proposed Rule's impact.") 59 Fed. Reg. 52133 at 52134 (Oct. 14, 1994).

at the same time. Thus, by itself the perceived "gap" is an insufficient reason to eliminate the ceiling. See AMCV 1994 Comments a% pp. 31-4. This is exactly the conclusion the Commission reached the last time it considered, and rejected, a similar proposal under nearly identical facts:

> The amount of unearned passenger revenue in the passenger cruise industry exceeds the $1 billion figure. The existing coverage filed with the Commission is for a little over $250 million. Therefore, there is a theoretical exposure of over $750 million.
>
> However, the twenty-five years of the industry and Commission experience, since enactment of P.L. 89-777, shows that there is little cause for alarm.
>
> The industry has an almost impeccable record . . . the few times when there has been any need to utilize the security instrument on file with the Commission, the available funds have been more than sufficient to cover the claims.[13]

The only change in circumstances between that analysis and now has been the bankruptcy of three cruise operators.'" Once again, however, a salient fact in each of those failures is that every single passenger in each case was covered by sufficient funds se% aside to indemnify them against the nonperformance of transportation. 61 Fed. Reg. a% 33063.

Even if some passengers had not been covered in those cases, the statutory purpose of the program would still no% have been frustrated. As stated above but repeated here for emphasis, the core purpose of this program is to provide a threshold test of financial responsibility for entry into the domestic cruise market, not to provide a federal insurance program to protect every dollar of passenger fares in the event of a corporate bankruptcy.

---

[13] Fact Finding Investigation No. 19 – Passenger Vessel Financial Responsibility Requirements, Report to the Commission (April 11, 1991) at p.37 (emphasis added).

[14] In the 1994 Proposed Rule the Commission also cited the involuntary bankruptcy of American Hawaii Cruises as a reason for the proposed change. 59 Fed. Reg. 15149. As AMCV fully explained in its 1994 Comments, this was a structured bankruptcy, well known to the Commission in advance, that was designed to facilitate the transfer of vessel assets to new owners, without any disruption of service. There were no passenger claims of nonperformance as a result of that transaction nor were any cruises canceled or rescheduled. See AMCV 1994 Comments at pp. 37-40.

2. **The proposal fails to analyze the impact of the new rule on the traveling public or on the cruise industry.**

Notwithstanding its recitation of facts as to the level of UPR coverage and those recent bankruptcies, the agency's discussion of the Proposed Rule is simply devoid of any meaningful analysis. It fails, for example, to address how the traveling public will receive any additional benefits beyond the complete protection they have enjoyed in the statute's SO-year history.

Additionally, there has no% been any effort to determine the effect on the cruise industry of imposing the stringent new requirements. Nowhere is there any mention, let alone discussion, of the hardship created for existing operators, or of the potential business failures that could be caused by the imposition of the new requirements. The 1996 Proposed Rule requires tens of millions of dollars of new coverage, which for some operators may be simply too onerous to meet. In this regard, the Surety Association of America has advised the Commission that the 1996 Proposed Rule would seriously disrupt the market for surety bonds. Noting that the proposed rule would require significant increases, with bonds potentially in the $lOO-$150 million range, the Association predicted a "severe lack of availability of bonds" with the likely result that operators would be forced "to leave the business".[15]

The Commission has also failed to consider the adverse competitive impact that its proposed rules would have on the cruise industry. The accepted standards for evaluating significant regulatory action and major rules discussed above contemplate an evaluation of the effects on competition. The impact on competition in the cruise industry, should the 4996 Proposed Rules be adopted, could be significant. See AMCV 1994 Comments at pp. 52-5. Only the very largest and strongest cruise lines are likely to be able to accommodate the stringent new standards. As a result, adoption of the rule may cause significant industry consolidation as smaller companies are unable to meet the substantial new obligations imposed by the rule. Elimination of companies will reduce competition in the industry and ultimately lead to higher prices for consumers. So too will the higher costs of compliance be passed along to consumers in the form of higher prices by those companies that survive. These potential anti-competitive consequences of implementation must be analyzed by the Commission, for they could well affect the very future of the cruise industry.

Last, the Commission has failed to evaluate the potential impact the proposed rule will have on forcing passenger vessel operators to relocate their vessels for departure from nearby foreign ports instead of U.S. ports in order to

[15] See Comments of The Surety Association of America in this docket, dated August 15, 1996.

avoid the Commission's jurisdiction.[16] Vessels departing from Canada, Mexico, or ports in the Caribbean are likely to be drawing from the same pool of American passengers as those departing from U.S. ports, ye% in none of those cases would the passengers receive any protection at all from the Performance Certificate regulations. Not only could this leave significant numbers of American cruise passengers once again vulnerable operator nonperformance, in effect reversing the success achieved in this regard under current rules, but it also could have an adverse impact on American ports as vessel operators relocate operations outside the U.S. to avoid the reach of the Commission.

3. Other commercial and regulatory safeguards exist.

When fashioning new regulations agencies also have a responsibility to avoid regulations that are duplicative of other federal regulations and to take into account the cost of cumulative regulations. Executive Order 12866, Section 1 (b) (10); (11). Furthermore, agencies are encouraged to identify and assess the role of the private market and available commercial alternatives to direct regulation. Id. at Section 1 (b) (I); (3). The availability of private insurance to cover the risk of nonperformance is obviously relevant in determining the impact on the traveling public, and in assessing regulatory options. In fact, the private market already has recognized the market opportunity in this case and has introduced new insurance products in the wake of the Regency Cruises bankruptcy cited by the Commission in its proposal. See insurance literature attached as Exhibit A. In addition, most operators maintain other insurance to cover casualty and business interruptions, which although no% passenger specific, could be relied on in the event of operator nonperformance and are relevant in assessing the ultimate risk to the traveling public.

Also absent from the Commission's discussion of these issues is the appropriate recognition of other industry factors which mitigate the perceived risk to the traveling public and which are appropriate for consideration in formulating any change in the current rules. Previously, AMCV presented a detailed explanation as to the significant protections under the Truth in Lending Laws afforded to those passengers who purchase their tickets by credit card and the availability of private insurance options to cover the risk. AMCV 1994 Comments

[16] The Commission noted that this issue was raised in the initial comment period by "many U.S. flag advocates," yet dismissed the potential relocation of vessel departures to nearby foreign ports by simply observing that none of the commenting foreign flag operators "in any way intimate that this would be likely to happen." 59 Fed. Reg. at 52134 (Oct. 14, 1994). That no vessel operators would volunteer to the Commission in public comments their intention to evade the Commission's jurisdiction can hardly be considered compelling evidence that they would not. On the other hand, it would seem virtually self evident that a cruise operator would at the very least seriously consider relocating readily-mobile vessel assets a few miles away to avoid the financial burden of tying up potentially tens of millions of dollars in cash assets.

at pp. 34-7. Both of these protections have been reported in the press." The Commission a% the time dismissed these points on the grounds that it had an independent obligation to make certain that passenger vessel operators have established financial responsibility. 64 Fed. Reg. 33059 a% note 25. But that obligation to implement P.L. 89-777 does not absolve the agency of the overall responsibility to assess commercial alternatives to direct regulation. E.O. 12866.

II. THE PROPOSED SELF-INSURANCE RULES DO NOT PROVIDE A WORKABLE OPTION.

As the only commercial cruise vessel operator qualifying under the Commission's self-insurance regulations, AMCV applauds the Commission's decision to maintain the self-insurance option after previously proposing its elimination in the 1994 Proposed Rule. Nonetheless, the proposed restoration of the old working capital test coupled with the new requirement for a supplemental bond covering 25% of the UPR are so burdensome as to make the self-insurance option unavailable to AMCV and almost certainly unavailable to any other passenger vessel operator. AMCV strongly urges the Commission to maintain the current self-insurance rules.

A. Requiring net worth equivalent to 100% of the UPR is the appropriate standard and should be retained.

A company's net worth is a realistic and straightforward way to determine the value of assets available, in the worst case, to passengers should they not obtain satisfaction for the nonperformance of transportation in some other manner. As the Commission has recognized, priority encumbrances such as preferred maritime liens, are already deducted in determining a company's net worth. Thus, net worth is a fair representation of assets potentially available to disappointed passengers. 61 Fed. Reg. at 333062-3. As the Commission has also previously concluded in adopting the current rule, net worth is an appropriate yardstick of financial responsibility, provided the assets are located in the United States and the operator can demonstrate five years of operation in United States trades with a satisfactory explanation of any claims for nonperformance. 57 Fed. Reg. 62479. This is all that is required under the statute and the Commission has offered no reason why this standard is now inadequate nor any rational as to why it should be changed.

[17] See "Travel Insurance: Cover Two Key Risks (Buying only what you need)" in Consumer Reports (July 1996) at pp.1 50-I. A copy of this article is attached hereto as Exhibit B.

5. Addition of the working capital requirement is unnecessary and will effectively eliminate self-insurance as an option.

AMCV was surprised and disappointed to see the proposed return of the previously rejected working capital requirement to the self-insurance regulations. This is an excessively burdensome requirement that has effectively precluded anyone from qualifying for the self-insurance option in the past,[18] and will again if it is restored.

The need to have the working capital test has been fully evaluated in the Commission's earlier Fact Finding Investigation and in the rulemakings leading to the current rule which was adopted to provide greater flexibility for passenger vessel operators. When adopting the current rule, the Commission proposed the elimination of the working capital requirement, concluding that:

> It would appear to be inappropriate to allow an operator to qualify as a self-insurer based strictly upon working capital. Working capital is extremely liquid and provides, standing alone, little if any protection for passengers, Indeed, the commenters advised that operators need their working capital for their day-to-day operational expenses.

57 Fed. Reg. 19097, 19099 (May 4, 1992).

There has been no failure of any self-insurer under the current rules which would give rise to the need for heightened standards. Yet the 1996 Proposed Rule would now restore the working capital requirement without any analysis, rationale or explanation as to why this 1992 assessment was incorrect or should be ignored.

C. The new proposed requirement for a 25% bond in addition to net worth and working capital is excessive.

The proposed restoration of the working capital requirement is burdensome enough, but to add a supplemental bond on what would already be redundant coverage -- from the combined net worth and working capital requirements -- must be considered excessive by any standard. The Commission has offered no explanation as to why a company that would already meet the stringent net worth and working capital requirements of the

[18] To the best of AMCV's knowledge, no commercial passenger vessel operator ever qualified for self -insurance during the years that the Commission required both net worth and working capital to be 110% of UPR. AMCV only qualified once the Commission eliminated the working capital requirement. 57 Fed. Reg. 62479.

proposed rule should have yet another financial burden imposed on it.[19] Moreover, it is hard to see how the traveling public would benefit. The likelihood that 100% coverage in working capital and 100% coverage in net worth could somehow both be exhausted before passenger claims are satisfied seems remote indeed.

The bottom line frustration with the 'I996 Proposed Rule for self-insurance is that it effectively eliminates the central provision of the original public law, which was to provide operators the ability to submit financial information to the Commission sufficient to evidence that %hey were financially sound. Bonds and other collateral were made available as an option for those operators who might choose to use them "in lieu" of the requirement to submit corporate financial information – but no% in addition thereto. See AMCV 1994 Comments a% pp. 1 0-8. What was once intended to be the most flexible of the options, will now be the most burdensome. That it will be the least attractive of the Commission's options to evidence financial responsibility should come as no surprise.

III. THE COMMISSION SHOULD CONSIDER ALTERNATIVES TO ADOPTING THE 1996 PROPOSED RULE.

To its credit, the Commission has to date recognized the industry-wide frustration with the proposed rule in this docket. In addition to making its own proposal to use voluntary associations to meet its perceived need for added protection, the Commission has continued to solicit suggestions for other alternatives to consider when reviewing the Public Law 89-777 program. 61 Fed. Reg. at 33059. AMCV appreciates the willingness of the Commission to consider alternatives and offers the following proposals in response to that invitation and in lieu of the 1996 Proposed Rule.

A. Rely on private insurance with mandatory notice of limitation on liability in the event of default.

A preferred solution that would avoid unnecessary governmental interference in the private marketplace while increasing protections to the traveling public is to rely on private trip cancellation or interruption ("TCI") insurance coupled with a mandatory warning to the traveling public of possible limitations on liability in the event of cruise operator default. A parallel exists, for example, in the warnings provided international air travelers of limitations to air carrier liability for death, personal injury, or loss or damage to checked baggage

[19] The supplemental bond requirement is redundant to the existing net worth requirement. However it may make sense to make the bond available as an alternative to a full 100% net worth requirement. An operator would normally qualify as a self-insurer by meeting the requirement that net worth equal 100% of UPR. If, however, net worth fell short and totaled only 90% of the UPR, for example, then the remaining 10% balance could be made up with an appropriate bond in that amount.

under the Warsaw Convention and reliance on private insurance to protect the traveling public from loss in excess of treaty amounts. See, e.g., 14 C.F.R. 221 .176 (Notice requirements); see also, In Re Air Disaster A% Lockerbie Scotland, 928 F.2d 1267, 1273 (2nd Cir. 1991) (holding treaty limits to be exclusive remedy for claims arising within the scope of the Convention).

If the longstanding public policy of the United States of reliance on the combination of mandatory notice/private insurance to protect the traveling public from harm as a result of the aforementioned limitation on liability for international air carriers is deemed sufficient under those circumstances, as it is and has been for decades, it certainly is sufficient protection in the present case. As the Commission well understands, while the cumulative magnitude of the financial exposure due to loss of UPR for the industry as a whole is great, the share borne by an individual traveler is minimal. There is no public policy rationale for creation of what in effect is a Federal insurance program to protect dollar-for-dollar cruise deposits measuring in %he hundreds of dollars for the individual traveler while relying on private insurance to protect the same traveling population from the incomparably greater risk of economic harm attendant to death or personal injury in air travel.

Private TCI insurance is widely available to the traveling public.[20] Indeed, the standard policy available to the traveling public provides broader protections than that accorded by the proposed rule. For example, the private option would protect travelers not only from a failure of an operator to provide transportation, but would also provide similar protection in the even% the travelers themselves are unable to embark on or complete the bargained for travel for covered reasons (e.g., illness, personal injury, etc.).

This approach to find commercial alternatives is also consistent with Executive Order 12866 which encourages agencies to consider the role of the private market in fashioning regulatory initiatives and to tailor regulations to impose the least burden on individuals and businesses. Section (1) (b)(1);(11). This proposed notice requirement could be coupled with the recommendation AMCV made in its 1994 Comments to require passenger vessel operators to disclose their financial condition to cruise passengers, who could then make their own informed decision as to which operator best suited their level of risk tolerance (just as they currently do for all other modes of transportation) and to have the ready availability to insure against that risk, or to purchase by credit card, as appropriate. See AMCV 1994 Comments at 57; Exhibit B a% 151.

---

[20] See, Consumer Reports Travel Letter, *Travel Insurance: Cover Two Key Risks (Buying Only* What You Need), Vol. 12, No. 7 (July 1996) at 148-52 (copy attached as Exhibit B); also, Mutual of Omaha Companies brochure *Cruise Insurance: Security for Your Travel Investment* (copy attached as Exhibit A).

B. Establish an industry trust fund to cover the risk of major nonperformance.

No one can contest the fact that the current regulatory requirements have worked well over the pas% 30 years in weeding out irresponsible operators and protecting the traveling public from being left stranded at the pier. What seems to trouble the Commission, however, is the potential for some rare, but major failure that greatly exceeds the current statutory ceiling of $15 million. The Commission was on the right track in proposing voluntary associations to spread that risk. However, the practical problems in implementing such a scheme make it difficult to put into practice.

One alternative to address such a cataclysmic situation is to retain the existing standards but to supplement them with an industry wide trust fund to be funded by a relatively nominal "head tax" imposed on each cruise passenger upon boarding a vessel subject to the Commission's jurisdiction. Deposited in a trust fund administered by the Commission, this fund could then be available to passengers who were no% covered by %he particular company's regular coverage should the feared catastrophe ever occur. In this way, adequate protection could be afforded by spreading the risk and minimizing the cost to the entire industry.[21]

CONCLUSION

For the reasons stated above, AMCV requests the Commission to maintain the current rules, particularly as they concern the self-insurance option. These rules have worked well to strike %he proper balance between protecting the traveling public without excessively burdening the cruise industry. To the extent the Commission nonetheless seeks to make some changes to the current regulations, AMCV requests that the Commission consider mandating the disclosure and notice requirements outlined above. Finally, AMCV urges the Commission to consider the establishment of the suggested industry wide fund to cover a major even%, without the need to burden every passenger vessel operator with the excessive requirements contained in the 1996 Proposed Rule.

Respectfully Submitted,

William N. Myhre
PRESTON GATES ELLIS
& ROUVELAS MEEDS
Attorneys for American Classic Voyages Co.

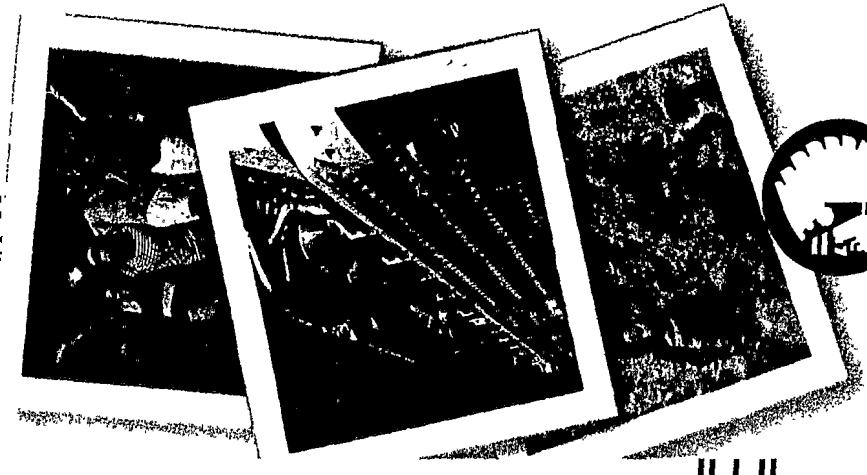
[21] AMCV recognizes that this proposal may require implementing legislation. There are similar programs upon which this could be modeled such as the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986, funds for which are derived from an industry-wide tax on cargoes to a statutory maximum amount.

Exhibit A

CRUISE INSURANCE

To Waive Pre-existing Condition Limitation, See Inside

CRUISEINSURANCE
Security for Your Travel Investment



Mutual of Omaha Companies
Underwritten by Omaha Property and Casualty Insurance Company

OPAC51

FROM _____

_____

_____

OPAC51

PLACE STAMP HERE
THE POST OFFICE WILL NOT DELIVER MAIL WITHOUT POSTAGE

07-0267

Mutual of Omaha Companies

SPECIAL COVERAGES POLICY SERVICE
PO BOX 31716
OMAHA NE 68131-0716

PRE-EXISTING CONDITION LIMITATION WAIVED

To qualify for our Pre-existing Condition limitation waiver... follow these simple steps

Step I Purchase Cruise Insurance within 24 hours from the time the initial Covered Trip deposit is made

Step II You must purchase Cruise Insurance for the FULL COST of your Covered Trrp

Step III To meet the 24-hour requirement, purchase by mail with the attached Enrollment Form or call our Toll-Free Assistance Line at l-800-228-9792

Enroll Now To Protect Your Travel Investment

Here's an overview **of the features** this important insurance provides

- **Trip Cancellation or Interruption —** Reimburses your non-refundable prepaid trip costs up to the benefit amount when your vacation must be canceled or cut short.
- **Trip Delay —** Pays to help you join your cruise or return home when delayed for 12 or more hours due to a covered delay
- **Missed Cruise Departure —** Pays to help you join your departed cruise when Inclement Weather causes a cancellation or delay of scheduled flights for three to less than 12 hours to your departure.
- **Accident Medical Expense —** Helps pay for hospital and physician bills if an accidental injury occurs during your trip requiring you to seek medical treatment.
- **Sickness Medical Expense —** Provides benefits for medical expenses caused by illness which occurs during your covered trip.
- **Baggage and Personal Effects —** Helps cover the cost of replacing items lost, damaged or delayed during your vacation
- **Medical Evacuation/Repatriation —** Helps pay expenses when a medical emergency or loss of life requires you to be transported to a hospital, other medical facility or to your place of residence.
- **Travel Assistance —** A toll-free number you can call from anywhere for a multitude of valuable travel services.
- **AND MORE!**

ADVANTAGES TO YOU

- Ability To Waive Pre-existing Condition Limitation
- Pnmary Coverage -You File With Us First
- No Deductibles
- Toll-Free Customer Service l-800-228-9792
- Coverage From The Time You Leave Home Until You Return From Your Trip

TripCancellation/Trip Interruption

"For what covered reasons can I cancel or Interrupt my trip?"

You're covered up to $20,000.00 to cover any non-refundable. unused portion of any prepaid expenses for Travel Arrangements whenever you're prevented from taking your trip or from completing your trip for any of the following reasons.

- Covered sickness, injury or death involving the Insured, Traveling Companion, Business Partner or Family Member of either the Insured or Traveling Companion which results in medically imposed restrictions as certified by a Legally Qualified Physician preventing an Insured's continued participation in the covered trip:

- The Insured or Traveling Companion being hijacked, quarantined, required to serve on jury duty (notice of duty must be received after insurance effective date) or served with a court order to appear as a witness in a legal action which involves neither the insured nor Traveling Companion (except law enforcement officers);

- The Insured or Traveling Companion's principal place of residence being rendered uninhabitable by unforeseen circumstances,

. insured or Traveling Companion being directly involved in a traffic accident which must be substantiated by a police report while en route to a scheduled departure point;

- Terrorism in a country which is part of the covered trip which causes the United States Department of State to issue a travel warnmg that an Insured should not travel within that country for a period of time that would include the covered trip. Such a travel warning must be made after the effective date. Benefits will not be paid if the travel warning is issued after the scheduled departure date and a substitute itinerary has been offered.

- Bankruptcy or default of an airline, cruise line or travel supplier (other than the agency from whom you purchased your travel arrangements) which stops service more than 10 days following your insurance effective date (ten-day waiting period waived if Bankruptcy or default occurs after trip departure). Maximum benefit $10,000.00.

- Additional costs incurred by a change in the per person occupancy rate for prepaid travel when a Traveling Companion cancels or interrupts a trip for a covered reason and you do not.

- Trip Interruption coverage also pays for accommodations and transportation expenses for up to $100/day for 10 additional days when a Traveling Companion must remain hospitalized; a covered Injury or Sickness prevents you from continuing travel; you must extend your trip with additional hotel nights due to a covered illness or injury not requiring hospitalization.

Trip Delay

"What if mechanical difficulties cause my travel on a Common Carrier to be delayed'."

• If you're delayed for 12 or more hours while en route to or from a covered trip by any delay of a Common Carrier, a traffic accident in which you were not directly involved, lost or stolen passports, travel documents or money, or quarantine, hijacking, strike, natural disaster, terrorism or riot, this plan pays up to $500.00 for Additional Transportation Costs to join the trip or return home, reasonable accommodations and meals (up to $100.00 per dav) and/or the non-refundable, unused portion of the prepaid expenses as long as the expense is supported by a proof of purchase and IS not reimbursable by another source Common Carrier must certify the delay

Missed Cruise Departure

"What if my connecting flight runs late due to bad weather and I miss my departure?"

• Your plan pays if inclement weather causes cancellation or a delay of all regularly scheduled airline flights for three to less than 12 hours to your point of departure. You can collect up to $500.00 for additional transportation costs to join the trip, reasonable accommodations and meals (up to $100.00 per day) and/or the non-refundable, unused portion of the prepaid expenses as long as the expense is supported by a proof of purchase and is not reimbursable by another source. Common Carrier must certify the delay of the regularly scheduled airline flight.

Medical Expense

"What if I need to visit a doctor or hospital while I'm away?"

• This plan pays for covered medical expenses — up to $5,000.00 for Sickness and up to $5,000.00 for Accidental Injury. You'll receive reimbursement for usual and customary expenses incurred to help pay for physician and hospital services, prescribed drugs and supplies, surgery and professional ambulance fees. The Pre-existing Condition limitation may apply.

• To qualify for benefits, initial medical treatment must be ordered or prescribed by a Legally Qualified Physician within 30 days of the accident that caused the Injury or the onset of illness. All treatment must be received within 52 weeks following the date of the accident or onset of the Sickness.

• Advance payment will be made to a Hospital, up to the Maximum Benefit Amount, if needed to secure an insured's admission to a Hospital because of a covered Sickness or Accidental Injury. The authorized travel assistance company will coordinate advance payment to the Hospital

Accidental Death & Dismemberment

"What if I lose my life in a crash or other tragic acadent?"

• This plan pays up to $50,000.00 for loss of life, two limbs, two eyes or one limb and one eye. or half that amount for loss of one limb or one eye if loss occurs while you're a passenger on (or getting on or off) a Common Carrier The $50,000.00 is also paid to your beneficiary if you die from exposure due to the disappearance, sinking or damaging of a plane or ship on which you're a passenger.

• If loss of life, limbs or sight occurs anywhere other than a Common Carrier as described above, this plan pays $lO,OOO.OO for loss of life, two limbs, hvo eyes or one limb and one eye. or half that amount for the loss of one limb or one eye.

Baggage & Personal Effects

"What if my luggage gets lost or stolen?"

• This plan will reimburse you for permanently lost, stolen or damaged baggage or personal items up to a combined maximum of $500.00 This plan will reimburse you for the lesser of the actual cash value (cost less proper deduction for depreciation) at the time of loss or the cost to repair or replace with material of a like kind and quality or $250.00 per article.

• Plus, if your checked baggage is delayed or misdirected by a Common Carrier for more than 24 hours from your time of arrival at your destination other than your residence, we will reimburse you for the expense of necessary purchases of personal items up to $100.00 as long as the expense is not reimbursable by another source and is substantiated by receipts for purchases. Common Carrier must certify the delay.

Medical Evacuation/ Repatriation

"If I become injured or ill, how would medical evacuation or repatriation help me?"

. Medical Evacuation will be determined by a Legally Qualified Physician when an injury or sickness is acute or life threatening and requires transportation to a hospital. Maximum benefit will be $25,000.00

• Transportation will be provided for the return trip home via economy transportation for any dependent children under 18 who are accompanying you if you are confined to the hospital for more than 7 days or if you are traveling alone this benefit will provide one round-trip economy transportation for a person of your choice to visit you in the hospital.

• Medical Repatriation will be provided when it is medically necessary for you to return to your home or a hospital near your house for continued treatment. This benefit provides the most appropriate and economical transportation

• Repatriation of Remains will be provided in the event of the Insured's death This benefit will provide for minimally necessary preparation and return of remains to the Insured's residence or to the place of burial

Travel Assistance Service

"Who can I call for help and advice if I run into something unexpected?"

• just call the number on the card for a Travel Assistance Representative Travel Assistance is available 24 hours a da! for a variety of travel-related concerns Services offered include

• Medical Evacuation or Repatriation
• Medical and Legal Referral
• Hospital Admission Guarantee
• Emergency Cash Advance
• Translation Service
• Prescription Drug/Eyeglass Replacement
• Passport/Visa Information
• Hail Bond
• Lost Baggage Retrieval
• Inoculation Information

Be sure you can access these services when you need them

TRAVEL INSURANCDEFINITIONS

"Business Partner" means an individual who: (a) is involved in a legal general partnership with an Insured, and (b) is actively involved in the day-to-dav management of an Insured's business.

"Common Carrier" means any public land. air or water conveyance operating under a valid license providing for the transportation of passengers for hire.

"Family Member" means an Insured's or Traveling Companion's: legal spouse, legal guardian, son or daughter (adopted, foster or step), son-m-law, daughter-in-law, brother, stepbrother, sister, stepsister, brother-!!I-law, sister-in-law, mother, father, stepparent, mother-in-law, father-in-la%, grandmother, grandmother-in-law, grandfather. grandfather-m-law, grandchild, aunt, uncle, niece or nephew, provided the family member resides in the United States, Canada or Mexico.

"Hospital" is as generally defined, but does not include a hospital or institution licensed or used principally for the treatment or care of drug addicts or alcoholics or as a clinic, continued or extended care facility, skilled nursing facility, convalescent home, rest home. nursing home or home for the aged

"Injury" or **"Injuries"** means accidental bodily injuries received while insured under this coverage and resulting in loss independently of sickness and all other causes

"Legally Qualified Physician" means a physician: (a) other than an Insured, a Traveling Companion or a Family Member, (b) practicing within the scope of his or her license: and (c) recognized as a physician in the place where the services are rendered

"Pre-existing Condition" means a Sickness or Injury which requires Medical Treatment while insured under the policy and for which an Insured Individual, Traveling Companion. Business Partner, or Family Member of an Insured or Traveling Companion has received medical advice, treatment or consultation (excluding prescription drugs) for or during the 60 days prior to and including the effective date of coverage

"Principal Insured" means the person named as the Principal Insured on the enrollment form, except when such person is a minor child, then the Principal Insured will be the applicant. the person who applies for this coverage.

"Traveling Companion" means: (a) up to three persons who are booked to share an Insured's same room accommodations on the covered trip. or (b) one person who accompanies an Insured on the covered trip

When You Are Covered

Trip Cancellation coverage begins at 12·01 a.!n following the date vour enrollment form and premium are postmarked. If you call to purchase, insurance coverage begins at 12:01a.m following the date you make the call. Trip Cancellation coverage ends at the point and time of departure on an Insured's Scheduled Departure Date Trip Delay coverage is in force while you're en route to and from the covered trip Missed Departure coverage is in force only during travel to the trip departure point. All other coverages begin at 12:01a.m. on the departure date or the day enrollment and premium are received, whichever is later and ends at the point and titne of return on an insured's Scheduled Return Date. Coverage only applies to trips up to 90 days. For trips over 90 days, call **1-800-228-9792.**

What Is Not Covered

Benefits are not payable for Sickness, Injuries or losses of an Insured or his or her Traveling Companion: resulting from suicide, attempted suicide, or any intentionally self-inflicted injury while sane or insane (in Missouri, sane only); resulting from an act of declared or undeclared war; while participating in maneuvers or training exercises of an armed service; while riding, driving or participating in races, or speed or endurance contests; while mountaineering (engaging in the sport of scaling mountains generally requiring the use of picks, ropes or other special equipment); while participating as a member of a team in an organized sporting competition; while participating in skydiving, hang gliding, bungee cord jumping, scuba diving or deep sea diving; while piloting or learning to pilot or acting as a member of the crew of any aircraft, received as a result or consequence of being Intoxicated or under the influence of any controlled substance unless administered on the advice of a Legally Qualified Physician; to which a contributory cause was the commission of or attempt to commit a felony or being engaged in an illegal occupation. due to normal childbirth, normal pregnancy or voluntarily induced abortion, for dental treatment except as a

result of an injury to sound natural teeth withm 12 months of the accidental injury; which exceed the Maximum Benefit Amount for each attached coverage as shown in the schedule of insurance; or due to a pre-existing condition — **note, the pre-existing condition limitation does not apply to emergency medical evacuation, medical repatriation and return of remains coverage, nor to coverage purchased within 24 hours from the time the initial deposit is paid on the covered trip.**

FOR TRIP CANCELLATION All cancellations must be reported to the Travel Supplier within 72 hours of the event causing the need to cancel. If the event delays the reporting of the cancellation beyond the 72 hours, report the event as soon as possible All other delays of reporting beyond 72 hours, will result in reduced benefit payments.

FOR BAGGAGE AND PERSONAL EFFECTS Benefits are not payable for any loss caused by or resulting from: breakage of brittle or fragile articles; wear and tear or gradual deterioration, confiscation or appropriation by order of any government or custom's rule; theft or pilferage while left in an unlocked vehicle, property illegally acquired, kept, stored or transported; an Insured's negligent acts or omissions; or property shipped as freight or shipped prior to scheduled departure date. Baggage and Personal Effects does not include animals, automobile and automobile equipment, boats or other vehicles or conveyances, trailers, motors, aircraft, bicycles (except when checked as baggage with a Common Carrier), household effects and furnishings, antiques and collector's items, eyeglasses, sunglasses, contact lenses, artificial teeth, dental bridges, hearing aids, prosthetic limbs, prescribed medications, keys, money, credit cards, securities, stamps, tickets and documents, professional or occupational equipment or property whether or not electronic business equipment, telephones, computer hardware or software.

If We have made a payment for a loss under this coverage, and the person to or for whom payment was made has a right to recover damages from the Third Party responsible for the loss, We will be subrogated to that right. An Insured shall help Us exercise Our rights in any reasonable way that We may request; not do anything after the loss to prejudice Our rights; and in the event an Insured recovers damages from the Third Party responsible for the loss, the Insured will hold the proceeds of the recovery for Us in trust and reimburse Us to the extent of Our previous payment for the loss.

This Description of Coverages IS only a brief summary of the policy and is not the contract of insurance, which is set forth in Blanket Policy M80TP, underwritten by Omaha Property and Casualty Insurance Company and issued to the Travel Trust. Please refer to the Memorandum of Coverage that will be mailed to you for complete details of this coverage.

Filing A Claim Is Simple

Call 1-800-228-9792, or send your name. address, cruise description, destination, date of departure and details of your loss within 20 days to the appropriate address below:

For Baggage. Trip Delay and Missed Cruise Departure Claims.

Omaha Property and Casualty • Claims Department
3102 Farnam Street • Omaha, NE 68131

One of the following must be immediately notified of baggage loss, theft, damage or delay: the police; hotel propnetors; ship lines; airlines; railroad; bus; airport; or any other station authorities.

For All Other Claims

Special Coverages Claims Service
P.O. Box 31156 • Omaha, NE 68131

In order to expedite the processing time for Trip Cancellation claims, follow these guidelines: collect a copy of the Travel Invoice, the cancellation date, original unused tickets/vouchers and the travel organizer's cancellation clause in regards to non-refundable losses. If an accident occurs during the trip, please obtain complete documentation before you return (i.e.: copies of medical bills showing diagnosis and treatment, loss reports and receipts).

QUESTIONS?
Call: 1-800-228-9792

Monday - Friday 8:00 a.m. - 5:30 p.m. Central Time

Please Take This Card On Your Trip

CRUISE INSURANCE

TRAVEL ASSISTANCE CARD

For emergency assistance while on your trip, use the following numbers:

Within the U.S. and Canada — 1-800-437-1283

Elsewhere, call collect — 312-424-6264

Representatives are available 24 hours a day.

Cruise Insurance Maximum Benefits	
Trip Cancellation/Interruption	Cruise Cost ($20,000 limit)
Bankruptcy/Default	$10,000 Maximum
Trip Delay	$500
Missed Cruise Departure	$500
Accident Medical Expense	$5,000
Sickness Medical Expense	$5,000
Common Carrier AD&D	$50,000
24-Hour AD&D	$10.000
Baggage & Personal Effects	$500
Baggage Delay	$100
Medical Evacuation	$25,000
Travel Assistance	Included

COVERAGE MUST BE PURCHASED FOR THE FULL COST OF THE TRIP. ALL COSTS ARE PER PERSON

Cruise Insurance Rates	
Cost of Package	Cost of Insurance
$ 0 - $750	$39.00
$ 751 - $1,000	$49.00
$1,001 - $1,250	$59.00
$1,251 - $1,500	$69.00
$1,501 - $2,000	$99.00
$2,001 - $3,000	$145.00
$3,001 - $4,000	$215.00
$4,001 - $5,000	$305.00

For trips over $5,001 per person, please call our Customer Assistance line at 1-800-228-9792.

Enroll By Mail

1. Complete the short Enrollment Form at right. Be sure to list the full cost of the trip for each person to be insured and the corresponding insurance premium amount.
2. Sign and Date the Enrollment Form. If paying by credit card, please remember to fill out the requested credit card information, otherwise include a check or money order for the total premium amount payable to Tele-Trip Company, Inc.
3. Detach the Enrollment Form, fold, seal and drop in the mail. Remember to enclose your check

Enroll By Phone

Simply call 1-800-228-9792. Please have a major credit card ready and your travel agent's location code (located in the lower left corner on the back of the enrollment envelope).

Premiums are nonrefundable except when an Insured is covered under more than one travel policy with Us for each Covered Trip, or unless required by apphcable state statutes.

ENROLLMENT FORM

NOTL MI individuals using the same enrollment form must be spouse or chddren who reside in the same household and claimed as a dependent All other individuals must fill out a separate enrollment form

	$	$
Principal Insured/Applicant	Trip Cost	Insurance Cost
	$	$
Insured Spouse	Trip Cost	Insurance Cost
	$	$
Insured Chdd	Trip Cost	Insurance Cost
	$	$
Insured Chdd	Trip Cost	Insurance Cost

Total Cost of Trip of All Insureds $_____

Total Insurance Premium $_____

Principal Insured's Address

City State ZIP

( )

Principal Insured's Daytime Phone

Cruise Line_____ Destination_____

Date of Departure ___/___/___ Date of Return ___/___/___

Beneficiary_____

(Benefits will be paid to the Beneficiary only in the event of the Principal Insured's death)

Signature of Principal Insured X_____ Date _____

(if minor, then signature of applicant)

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an Insurer, submits an apphcatton or files a claim containing a false or deceptive statement is guilty of insurance fraud.

How To Pay

❑ Check or money order (payable to Tele-Trip Company, Inc.)

❑ VISA® ❑ MasterCard® ❑ Discover® ❑ American Express®

Account Number: | | | | | | | | | | | | | | | |

Expiration Date: ____ I - f -

Prmt Full Name:_____

(as it appears on credit card)

Signature:_____

(Mandatory)

PLEASE NOTE. In Alabama, only American Express' charge cards can be accepted for the purchase of this insurance

NOTICE TO RESIDENTS OF CALIFORNIA -This plan contains disability msurance benefits or health msurance benefits, or both, that only apply during the covered trip You may have coverage from other sources that already provides you with these benefits. You should review your existing policies If you have anv questions about vour current coverage, call your insurer or health plan

Policy Form M80TP OPAC51

Exhibit B

Travel In&r ance: Cover Two Key Risks

Buying only what you need

Insurance is probably the most grossly overpriced of all travel services. Nevertheless, there are two big-ticket risks you should consider covering: trip cancellation or interruption (TCI) and emergency medical evacuation (EME). This report looks at what's available.

Most travelers can forget about-the other types of travel insurance—accident and medical, for instance, with their inflated prices and, often, coverage that you already have through some other policy. (You don't even need TCI if you can accept the occasional forfeit of a modest deposit or prepayment.) And don't buy expensive bundles of coverages to protect against niggling, minor risks such as having to buy a few extra pieces of clothing or personal-care items if your baggage is lost We note such other coverages only where they're included in TCI or EME policies at no extra cost

Missing Player

Mutual of Omaha, a long-term major player (troth as ***Travel Assure*** and under its own name) in the travel-insurance market, is in the process of redesigning its **policies.** Unfortunately, the new ones weren't available to us at press time, and the old ones are obsolete. We'll review the new policies as soon as we see them.

BLINDSIDE HITS

You have to prepay in full for a package tour, a cruise, or an airline ticket—often many months ahead. Once you've paid, the fine print in a tour or cruise agreement often requires you to forfeit your whole payment if you camel within a month or less of departure. And some airline tickets are neither refundable nor exchangeable: You get back nothing if you don't take the flights as originally ticketed. Full or partial loss of prepayments is usually the worst pocketbook risk you face in travel.

But you can never be 100% sure of completing a trip you've planned and prepaid. Anything from a death in the family to a summons to jury duty to an act of terrorism at your destination could prevent you from leaving on schedule.

Even after you've started out, your own illness or a problem back home could force you to break off your journey. You may then face a stiff penalty to change the return flight of a round-trip airline ticket. If you're forced to quit a cruise midway, a one-way flight home can be expensive. If you suffer a severe accident or illness in a remote area, you may have to be evacuated to a distant medical facility. In all such cases, you face a heavy monetary hit-perhaps several thousand dollars' worth.

KEY FINDINGS

Travel insurance makes sense only for risks you can't afford to absorb:

- Loss of nonrefundable or partially refundable prepayments or deposits when you're forced to cancel a trip.
- The extra costs of substitute arrangements if your trip is disrupted.
- Financial collapse of a travel supplier before you complete your trip.
- The high c&t of emergency medical -<evacuation if you have an accident or become ill in an area with inadequate medical facilities.

'For those basic protections, a *cruise/tour* policy from Access America or CSA, or a custom-policy from Travelers, is -your best 'buy. Those policies cover both -trip-cancellation and emergency medical evacuation at, a reasonable cost. Other policies offer similar protection, but at higher prices. *Travel Guard* ***Gold*** covers just about any conceivable situation, but at a top price.

Your cruise line or tour operator may sell its owninsurance. If it looks like a better deal than the three top policies in our fist, buy it—but only if it covers all the reasons for TCI, not just medical ones.

Don't rely on a cancellation waiver sold by a cruise line or tour operator: Even though it may be cheaper, it will omit too many risks.

POLICY TYPES

Travel insurance comes in several versions:

- Standard ***retail*** policies are issued by major insurance carriers, either under their own corporate name or under a special one they use to market travel insurance. The policies are sold by travel agents, by some tour operators and cruise lines, and directly by the issuing insurance company.

Retail policies have two variations. ***Custom*** policies let individual travelers choose their own mix of coverages from a set of options (some issuers also offer an inclusive option that bundles all the cov-

COVERAGE, BENEFITS, AND COSTS

	Custom Policies					Cruise/Tour Policies		
	Access America International	American Express	Berkeley ARM Carefree	Travel Guard Gold	Travelers	Access America	CSA Plan A129	Travel Guard
TRIP CANCELLATION/INTERRUPTION (TCI)								
Cost per $100 coverage(a)	$6	$5.50	$5.50(b)	$8	$5.50	$3.94-6.80	$4.74-6.60	$6-6.78
Illness/injury/death	✔	✔	✔	✔	✔	✔	✔	✔
Preexisting conditions(c)	60 days	60 days	60 days	60 days	60 days	60 days	60 days	60 days
Waiver(d)	1 day	7 days	1 day	7 days	7 days	1 day	7days	7 days
Operator failure	✔	✔	✔	✔	✔	✔	✔	✔
Home problems	✔	✔	✔	✔	✔	✔	✔	✔
Destination calamities	✔	✔	—	✔	—	✔	✔	✔
BUNDLED WITH TCI (PER PERSON)								
Accident	—	—	—	$25,000	—	—	—	$25,000
Baggage Loss	—	—	—	$1500	—	$500	$750	$1000
CDW (primary)	—	—	—	$25,000	—	—	$25,000	—
Delay(e)	—	$400(f)	$100(f)	$600	$250	$250	$1750	$600
Evacuation	—	—	—	$20,000	10 times TCI(g)	$20,000	$10,000(h)	$20,000
Hotel overbooking	—	—	—	$100	—	—	—	—
Medical/health	—	—	—	$10,000	—	$10,000	$10,000(h)	$10,000
Any-reason cancellation	—	—	—	$400(i)	—	—	—	—
EMERGENCY MEDICAL EVACUATION (EME, PER PERSON)								
Coverage	$50,000	$25,000	$10,000	Incl with TCI	Incl with TCI	Incl with TCI	Incl with TCI	Incl with TCI
Cost (minimum)	$42/4 days	(j)	$39/4 days	—	—	—	—	—
Cost (two weeks)	$62	(j)	$65	—	—	—	—	—
BUNDLED WITH EME (PER PERSON)								
Accident	—	$25,000	$25,000	—	—	—	—	—
Baggage	—	$1000	$500	—	—	—	—	—
Basic TCI	—	(j)	$300	—	—	—	—	—
Medical expense	$10,000	$10,000	$1000	—	—	—	—	—
STANDARD TRIP: TWO PEOPLE, 14 DAYS; $2500 TCI, $10,000 EME PER PERSON								
Cost	$418	$306	$339	$400	$275	$218	$237	$296

Note: Some policies may not be available In all states.
(a) Range indicates that cost per $100 vanes with the total amount purchased.
(b) $4.75 per $100. if you buy policy including EME.
(c) Period prior to purchase of insurance dunng which preexisting conditions are excluded (in absence of waiver).
(d) Maximum number of business days after purchase of ticket within which buyer must buy TCI insurance in order to qualify for no-cost waiver accepting preexisting conditions (see text).
(e) Combined maximum value of travel-delay and baggage-delay compensation, if any, may be subject to lower daily limit.
(f) Bundled with policy that provides EME coverage.
(g) Pays up to 10 times the TCI limit, to a maximum of $25.000.
(h) Combined maximum value of medical/health and EME coverage.
(i) Pays haff the penalty, up to $400, on cancellation for any reason.
(j) Cost of EME component included in price of bundled policy that provides TCI (which is based on amount of TCI purchased).

erages). The TCI component of a custom policy (without other bundled coverages) costs $5-6 per $100 of the value of the trip, regardless of its length; EME prices are usually based on a trip's duration. For a given level of protection, custom policies are generally more expensive than alternative options.

Some companies sell a retail variant called a *cruise/tour* policy (or something like that). Typically, the policy is a bundle of popular covemges, at a per-person price based on total trip cost.

The cruise/tour policies in our sample are generally better buys than the custom policies. We found few significant differences in eligibility, coverages, key benefits, or exclusions to account for the price variation. According to industry sources, the cruise/tour policies are cheaper because they're standardized and carry smaller markups and commissions than custom policies.

■ ***Wholesale*** policies are sold by tour operators and cruise lines under their own names (although the actual policy is usually provided by a big in-

surance company). They're typically a bit cheaper than retail policies, but not always-the cruise line or tour operator, not the insurance company, sets the selling price. Unfortunately, they don't cover some important risks—notably operator or cruise-line failure. Risk of tour-operator failure has been a longstanding problem. And, these days, some cruise lines are wobbly as well.

True, some cruise-line wholesale policies have an advantage over retail policies. If the insurance company that underwrites the policy rejects a claim for an aborted trip as arising from a preexisting medical condition, the line offers partial compensation in the form of a substantial discount on a future cruise. That's not a bad tradeoff if you're reasonably confident of your cruise line's financial stability.

■ *Cancellation waivers are* the cheapest form of trip-cancellation coverage, and by far the weakest. They're not really insurance: For a fee, the tour operator or cruise line waives its cancellation penalties under certain circumstances. Waivers typically cover only limited pre-departure contingencies, may not cover cancellations within 24 hours of departure, and don't cover midtrip interruption at all. Furthermore, you won't recover anything if the tour operator or cruise line fails.

PRICEY COME-ONS

You can buy a variety of coverages other than TCI and EME. But they make little sense for most travelers:

■ ***Medical.*** Many travelers are covered by their own health insurance or HMO for medical costs incurred overseas. While Medicare doesn't cover overseas costs, many Medicare supplements do. If you aren't covered, however, supplementary insurance is a good idea.

■ ***Accident.*** If you really need accident insurance, you need it year-round, not just when you travel.

■ ***Theft.*** Chances are that your homeowner's or tenant's policy covers your personal effects, even when you travel. Some- travelers—especially those on cruises—bring along valuables that may not be covered. 'But even those. folks are probably better off with a year-round floater policy than with by-the-trip baggage insurance.

■ ***Delays, overbookings.*** Travelers can usually afford to take a chance on such small risks as flight delays and hotel overbookings.

❑ ***Airline flight insurance.*** That coverage cynically plays on an irrational fear of flying. Statistically, you're more likely to die of a bee sting than in an airplane crash.

DECODING THEM

All the policies in the table on page 149 cover TCI. However, there are some differences in their breadth of coverage. Here's how to interpret what each offers.

Illness/injury/death coverage protects you (or your heirs) against losses caused by personal mishaps:

■ All the TCI policies we list cover an insured traveler's costs incurred due to mishaps suffered either by the insured traveler or by one or more of the insured's traveling companions. (They do not, however, cover costs incurred by the companion unless the companion also buys insurance.) All also cover cancellation or interruption of a trip because of the illness, injury, or death of a close family member at home.

■ *As with* health insurance, ***preexisting conditions*** are the most contentious element of TCI. All listed policies exclude compensation if your trip is canceled or interrupted by a medical problem that arose within 60 days prior to the date you bought the policy. However, all the listed policies accept a preexisting condition that is controlled by medication. Moreover, all listed policies now offer to waive the limitation on preexisting conditions entirely, at no extra cost, if you buy TCI for the full value of the trip immediately after you make your first deposit. Some policies give you just one business day to do that, but several have recently eased that requirement to seven days.

Not all policies are as lenient as those we've listed. We've seen several that won't cover any preexistmg condition. controlled or not, for which the msured person received medical treatment or advice within 90-l 80 days of buymg the policy. If a policy doesn't offer a waiver, a claim could theoretically be denied if you so much as took an aspirin on a doctor's advice.

Usually, a policy's limitations on preexisting conditions apply to anybody—the insured traveler, a traveling companion (insured or not), or a family member at home-whose medical condition causes a trip to be canceled or interrupted.

■ TCI policies usually include a long list of other exclusions. For instance, the policy won't pay if a trip is spoiled by self-inflicted injuries, injuries resulting from a hazardous activity (including many active sports) or use of illegal drugs, or war injuries.

■ In case of severe accident or illness, some TCI policies cover the expenses of emergency evacuation. (See ***'International 911,'*** page 15 1.)

Operator failure. Despite federal and state safety nets, it seems that every year or so at least one tour

Most TCI policies now cover all preexisting conditions if you buy your TCI insurance when you make your first deposit.

operator fails, leaving thousands of travelers holding worthless air tickets and prepaid hotel vouchers. Some may even be stranded abroad without return transportation. TCI can protect you against the costs arising from those contingencies:

■ All listed policies pay off in case an operator "fails," "defaults," or "ceases operations," but we've seen some that protect only against "bankruptcy." There's a big difference: Tour operators often belly up and disappear without ever filing for bankruptcy.

❑ TCI policies typically exclude failure of the company that sells the insurance. Thus, if you buy TCI from a tour operator, the insurance won't protect you if the tour operator fails.

TCI isn't the only way to protect against operator failure. If you buy a tour or cruise with a charge card, you can get the charge removed from your account if the supplier fails to provide the service. But, of course, the charge card doesn't protect you against any other TCI risks.

Home problems. TCI can cover you against a laundry list of misfortunes and surprises at home that might cause you to cancel or interrupt a trip. Among them: a fire or flood at your house, a call to jury duty, or an accident that makes you miss a flight or a sailing.

Destination calamities. TCI can also cover you against unexpected problems at your destination. Among those: an an-plane hijack, a natural disaster (fire, flood, earthquake, or epidemic), terrorism, or an unannounced strike.

HOW TCI PAYS OFF

When a problem arises, here's how TCI soothes the financial pain:

Cancellation. If you cancel before you leave, TCI covers whatever fraction of prepayments or deposits you can't recover from the supplier, plus any additional costs.

If you get sick, you must first ask the tour operator, cruise line, or airline for any refund it normally provides in such cases: TCI pays the difference between what you paid and what you can recover. If you pay for a tour or cruise at a double-occupancy rate and your traveling companion suddenly can't go, TCI typically pays the single supplement so that you can complete the trip alone.

Interruption. TCI also picks up extra costs if you have to cut off a trip and return home. If you have to change your return air ticket, you first find the best deal the airline can give you, then apply for TCI to pay for any reissue fee or additional fare. If you have to leave a tour or cruise in midtrip and buy a replacement ticket home, TCI reimburses you for "unscheduled return." If a traveling companion must return early, TCI pays single supplements so that you can complete your trip alone. If necessary, some TCI insurance arranges (and pays for) emergency medical evacuation.

'INTERNATIONAL 911'

All the retail trip-cancellation policies we're reporting on cover emergency medical evacuation, bundled either with TCI or some other coverages. But if you travel for extended periods, especially into high-risk areas, you may want to consider buying separate EME insurance-either on a per-trip or an annual basis-from a company that specializes in it.

Several companies sell comprehensive policies that combine medical insurance with EME and give access to a worldwide network of local representatives *who* make arrangements and provide assistance to travelers in difficulty. Among them are Global Emergency Medical Services, Health Care Abroad, Intl SOS Assistance, Travel Insurance Service, and Worldwide Assistance. Some of those companies operate their own overseas assistance networks; others subcontract that part of their coverage. (When you buy EME as part of a bundled retail policy, chances are that one of the specialist companies actually provides the EME service as a subcontractor.)

If an illness or injury prevents a traveler from returning home as an ordinary airline passenger, EME insurance pays for whatever special transportation is required. However, that transportation is subject to the review of some designated authority-a source of a major disagreement we've heard about from a reader. Also, the insurance company, not the traveler, decides on the means of transportation.

Several EME policies offer TCI as an extra-cost option, at rates comparable with those of the retail policies (and often provided on subcontract by one of the TCI companies). However, in some cases, the TCI coverage bundled with an EME policy isn't as good as that of the retail policies. The exclusions for preexisting conditions may be much more restrictive--up to five years, in one case--and preexisting conditions may not be covered, even if controlled by medication. Moreover, some of those companies' TCI applies only to trips canceled or interrupted for medical reasons-operator failure, home misfortunes, and destination disasters aren't covered.

EME is a tough coverage to evaluate. The odds on needing a medical evacuation are minuscule. But if you do need it, the price tag can be astronomical. Some travelers want special EME insurance as a hedge, but the evacuation coverage included in a standard TCI or bundled policy is probably enough for most travelers.

Delay. If you merely delay your departure (for a reason covered by the policy's cancellation provisions), TCI pays the extra costs of alternative transportation to join your trip-an airfare to your cruise's first port of call, say, or the penalty to switch your air ticket to a later flight.

WHICH POLICY FOR YOU?

Our table shows the key features of eight retail policies. Five are custom, three are cruise/tour.

All the policies we list cover the basic needs.

C.C. 020/030

RECEIVED

'96 OCT 17 P2:59

FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY

NORWEGIAN CRUISE LINE
October 14, 1996

Mr. Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Re: Docket No. 94-06 - Proposed Rule
Financial Responsibility Requirements for
Nonperformance of Transportation - Issuance of Performance Certificates

Dear Mr. Polking:

Norwegian Cruise Line Limited ("NCL") and its predecessor companies were pioneers in the development of the modern North American cruise industry. NCL has been in the cruise business since the Federal Maritime Commission ("FMC" or "Commission") began issuing Performance Certificates some thirty years ago. Today, with a fleet of seven vessels, there is no company with more Caribbean cruise experience than NCL. Nor is there any cruise company with a better record for performance of its transportation obligations to its passengers. With this long and solid performance history, NCL was as surprised as the rest of the cruise industry1 when the Commission commenced the proceedings in this docket some two and one-half years ago.

We are surprised by the commencement of these proceedings because the current regulations implementing the Performance Certificate program have been the subject of a series of rulemakings, investigations and other inquiries since 1990, which culminated in the current rules. The fundamental proposal in the pending docket is the elimination of the current $15 million coverage ceiling. This same proposal had been rejected when the Commission increased the ceiling from $10 million to its current level (55 Fed. Reg. 34564). Later, in the Commission's exhaustive investigation of the issue, removal of the ceiling was found to be unwarranted (Fact Finding Investigation No. 19, at p. 25). Now the current rulemaking once again proposes elimination of the ceiling, but with little or no explanation why elimination is necessary. While NCL supports the ICCL's most recent comments submitted in this docket, it is important to note that the ICCL did not support, as the member lines could not agree on supporting, the elimination of the $15 million ceiling.

1 As a member of the International Council of Cruise Lines ("ICCL"), the cruise industry trade association, NCL supports the most recent comments submitted by ICCL in this docket.

Had there been evidence of a problem in the industry, the regulatory reversal could be explained. To the contrary, history has proven the program works extremely well in protecting the public from the fly-by-night operators that were the focus of the original statute (Public Law 89-777). Unlike NCL and the other established cruise ship companies which have a long-standing record of good service, those operators the statute intended to reach have made no commitment to serve the traveling public in the United States. The existing regulations have worked well to keep these operators out of the United States. They have worked so well, in fact, that in the thirty years the program has been in existence there has not been a single reported instance of a passenger failing to recover advance fares or deposits in the face of non-performance of transportation over which the FMC has jurisdiction.

Because there is no history of nonperformance of transportation, the suggested reason for the proposed change in rules is that the aggregate industry-wide level of Unearned Passenger Revenue (UPR) has grown so dramatically that the present level of bonds or other coverage is now insufficient. The problem with this explanation, however, is that based on information provided by the Commission, total UPR is identical to the estimated total UPR at the time the current rule was adopted. Moreover, the actual level of coverage since then has increased some 17% (from $250 million to $300 million) leaving the real reason for the proposed elimination of the ceiling unexplained. Even the occasional business failure is an insufficient rationale for changing these rules where no passenger within the Commission's jurisdiction has ever lost an advance fare deposit.

The proposed elimination of the current ceiling will impose an enormous burden on existing cruise operators without any discernible improvement in the ability of the traveling public to recover advance fares or deposits in the event of non-transportation. The cruise industry will have to increase dramatically its cash reserves set aside to meet the new requirements. For NCL the new rules will mean a six-fold increase in these reserves of cash or other collateral. This is a remarkable burden for a company, and an industry, that has an impeccable record of performance. Such a requirement will necessarily increase costs to travelers. It will limit the company's flexibility. It will provide a powerful disincentive to operate out of U.S. ports, in favor of nearby foreign ports and it will be extraordinarily anti-competitive. Those few very large companies with the deepest pockets and the wealthiest parents will be able to obtain bonds at a cost and in a manner that will simply be unavailable to others in the industry, as the comments of the Surety Association of America in this docket suggest (see letter dated August 15, 1996). One of the practical consequences of the Commission's proposed rule may well be a forced consolidation of the industry to the benefit of the very largest operators. Ultimately this will reduce competition, decrease the choices available to consumers and increase consumer costs.

Our concern with the rulemaking process is that these potential consequences appear not to have been examined in developing the proposed rule. Nor have the other realities of the cruise industry been give adequate consideration. The fact that a large percentage of the traveling public is already protected by credit card purchases or private insurance options is clearly relevant in assessing the risks to the traveling public, yet the Commission has failed to consider these factors.

We do not believe Congress intended the Commission to ignore relevant circumstances such as these additional consumer protections when enacting regulations pursuant to Public Law 89-777. There comes a point where the benefits of regulatory action are outweighed by the costs imposed on those to be regulated, and in this case it is the operators and the traveling public that will suffer significant cost increases in return for only the most hypothetical of benefits. Before the Commission decides to proceed with this rulemaking, NCL strongly encourages the Commission to undertake a full cost-benefit analysis of the impact of the proposed rule on the entire industry and the anti-competition effects such a rule will have on the traveling public.

Should the Commission conclude that further changes are required after undertaking such an analysis, NCL suggests that the issue be dealt with as it has been in the past. That is simply to increase the ceiling to accommodate inflation and the passage of time. Such an increase, tied to the Consumer Price Index, would help keep the coverage level at a sufficiently high level to allow the program to function as it was originally intended. It would weed out the fly-by-night operators, while allowing the rest of the industry to continue to provide the traveling public with vacation alternatives of the caliber and value for which the North American cruise industry is known.

We also urge the Commission, in the event it enacts rules eliminating the ceiling, to provide for a one year period prior to the effective date of the initial phase of increased bonding requirements. We believe this period would allow cruise operators sufficient time to implement the necessary arrangements to meet these substantial financial requirements.

NCL strongly supports protections for the traveling public and is prepared to do what is necessary to ensure that reasonable protections are in place. This proposed rule does not strike that balance. Only a full examination of the proposal and its consequences can answer the question of whether it is a reasonable balance of the need to protect the traveling public without undue burden on the industry and the traveling public. We urge you to undertake that analysis before considering any further action in this matter. We believe the correct conclusion from such an analysis will be to simply increase the ceiling by an amount necessary to reflect the impact of inflation.

We appreciate the opportunity to submit these comments.

Sincerely,

NORWEGIAN CRUISE LINE LIMITED

Hans Golteus
President and Chief Operating Officer

CC: 020/030
60
50
022

AMERICAN MARITIME OFFICERS

490 L'ENFANT PLAZA EAST, SW • SUITE 7204 • WASHINGTON, DC • 20024
PHONE (202) 479-1166 FAX (202) 479-1188

RECEIVED
'96 OCT 23 A10:16
FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

MICHAEL R. McKAY
President

CHARLES T. CRANGLE
Executive Director
Congressional & Legislative Affairs

October 22, 1996

Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol St., N.W.
Washington, D.C. 20573

Re: Docket No. 94-06

Dear Mr. Polking:

The American Maritime Officers (AMO) is a labor organization representing U.S. citizen, U.S. Coast Guard licensed navigation, engineering and electronics officers in the American merchant marine. AMO members serve aboard U.S. Flag vessels in the international and domestic maritime commerce of the United States. AMO has had a long-standing interest in the passenger vessel industry and our members currently serve on four U.S. flag passenger vessels. We strongly support efforts to strengthen the U.S. cruise industry and are concerned that your proposed new rules will not only work to frustrate those efforts but will do so with little or no benefit to the traveling public who are the intended beneficiaries of the proposal.

We fail to see the problem that has prompted the FMC to propose these new rules. In the thirty years since Congress created the Performance Certificate program, not a single passenger traveling on a vessel under the Commission's jurisdiction has failed to recover advance deposits or fares in the event of nonperformance of transportation. Clearly the statutory purpose of keeping out unscrupulous and finally unsound operators has worked.

By requiring substantial increases in the amounts of coverage, the proposed rules cannot improve on his perfect record, but they will increase the burden on operators to the point where not only will new entrants fail to come into the business, but established operators may be forced out of it. Because the requirements are triggered by departures from U.S. ports, foreign flag operators are very likely simply to shift operations to Caribbean, Mexican or Canadian ports to avoid the reach of the FMC, while still selling tickets to the same American passengers, who will then be without any protections at all. U.S. flag companies, with a domestic coastwise market niche and a commitment to serving American ports, will not have the same flexibility and will clearly be disadvantaged.

U.S. flag operators are also disadvantaged by the proposed changes to the self-insurance requirements. After considerable study and review, the Commission chose several years ago to

make the requirements more flexible and for the first time companies could qualify for self-insurance. Because of the U.S. based asset requirement, the qualifying companies were U.S. based, U.S. flag operators. Now the Commission is proposing to restore the very same provisions that would once again make this option unavailable to U.S. flag operators (and virtually any other current operator). This self-insurance option is one of the very few advantages that U.S. companies have over their foreign flag competitors that operate in the North American market with significant cost advantages from their subsidized vessels, substandard crew wages and complete freedom from U.S. income tax. The proposed changes in the self-insurance requirements will eliminate this option to the detriment of current U.S. flag operators, and will surely discourage any new U.S. flag operators.

While we support protections for the American vacationing public against unscrupulous, fly-by-night operators, we are concerned that the rules in this docket have been proposed without any cost-benefit analysis that weighs the perceived benefits to those travelers against the harm to Americans seamen, American operators, American ports, and ironically to the very same American travelers who will find themselves with no protections at all when they board the same vessels in nearby foreign ports.

We do not believe the case has been made to change the existing rules and oppose any change until the benefits of such a change can be shown to outweigh the costs.

We appreciate this opportunity to submit these comments.

Sincerely,
American Maritime Officers

Charles T. Crangle
Executive Director, Congressional
and Legislative Affairs

AMERICAN MARITIME OFFICERS

490 L'ENFANT PLAZA-EAST, SW • SUITE 7204 • WASHINGTON, DC • 20024
PHONE (202) 479-1166 FAX (202) 479-1188

MICHAEL R. McKAY
President

CHARLES T. CRANGLE
Executive Director
Congressional & Legislative Affairs

October 22, 1996

Joseph C. Polking
Secretary
Federal Maritime Commission
800 North Capitol St., N.W.
Washington, D.C. 20573

Re: Docket No. 94-06

Dear Mr. Polking:

The American Maritime Officers (AMO) is a labor organization representing U.S. citizen, U.S. Coast Guard licensed navigation, engineering and electronics officers in the American merchant marine. AMO members serve aboard U.S. Flag vessels in the international and domestic maritime commerce of the United States. AMO has had a long-standing interest in the passenger vessel industry and our members currently serve on four U.S. flag passenger vessels. We strongly support efforts to strengthen the U.S. cruise industry and are concerned that your proposed new rules will not only work to frustrate those efforts but will do so with little or no benefit to the traveling public who are the intended beneficiaries of the proposal.

We fail to see the problem that has prompted the FMC to propose these new rules. In the thirty years since Congress created the Performance Certificate program, not a single passenger traveling on a vessel under the Commission's jurisdiction has failed to recover advance deposits or fares in the event of nonperformance of transportation. Clearly the statutory purpose of keeping out unscrupulous and finally unsound operators has worked.

By requiring substantial increases in the amounts of coverage, the proposed rules cannot improve on his perfect record, but they will increase the burden on operators to the point where not only will new entrants fail to come into the business, but established operators may be forced out of it. Because the requirements are triggered by departures from U.S. ports, foreign flag operators are very likely simply to shift operations to Caribbean, Mexican or Canadian ports to avoid the reach of the FMC, while still selling tickets to the same American passengers, who will then be without any protections at all. U.S. flag companies, with a domestic coastwise market niche and a commitment to serving American ports, will not have the same flexibility and will clearly be disadvantaged.

U.S. flag operators are also disadvantaged by the proposed changes to the self-insurance requirements. After considerable study and review, the Commission chose several years ago to

AMERICAN MARITIME OFFICERS

490 L'ENFANT PLAZA EAST, SW • SUITE 7204 • WASHINGTON, DC • 20024
PHONE (202) 479-1166 FAX (202) 479-1188

MICHAEL R. McKAY
President

CHARLES T. CRANGLE
Executive Director
Congressional & Legislative Affairs

October 23, 1996

From the Office of Charles Crangle

Attached are 15 copies of the letter delivered to you this morning.
I forgot to include them.

Thank you,

Sheila Baker

94-06

Monday
April 26, 1999

Part LVIII

Federal Maritime Commission

Semiannual Regulatory Agenda

FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Unified Regulatory Agenda

AGENCY: **Federal Maritime Commission.**

ACTION: **Semiannual regulatory agenda.**

SUMMARY: Pursuant to **section 4(b) of E.O. 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 et *seq.), the* Commission anticipates having under consideration, during the period from April 1, 1999, to March 31, 2000, actions in the areas listed below.**

FOR FURTHER INFORMATION CONTACT: **For further information concerning Commission rulemaking proceedings or the status of any matter listed below, contact: Bryant L. VanBrakle, Secretary, 800 North Capitol Street NW., Washington, DC** 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: **Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for** which regulatory **agencies** may **propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. Section 4(b) of Executive Order 12866 also requires agencies to publish a regulatory agenda. The agendas include information on regulatory activities being conducted or reviewed during the succeeding** 12 **months by the Commission.**

The following is the Commission's unified regulatory agenda. The agenda does not necessarily include all petitions for rulemakings which are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

Bryant **L. VanBrakle,**

Secretary.

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
4281	Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation intermediaries (Docket No. 98-28)	3072-AC06
4282	Garner Automated Tariff Systems (Docket No. 98-29)	3072-AC07
4283	Service Contracts Subject to the Shipping Act of 1984 (Docket No. 98-30)	3072-AC08

Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
4284	Coloading Practices and Possible Section 16 Exemption for Coloading (Docket Nos. 93-22 and 94-26)	3072-AB75
4285	Financial Responsibility Requirements for Nonperformance of Transportation and Inquiry Into Alternative Forms (Docket No. 94-06; Further Notice of Proposed Rulemaking)	3072-AB80
4286	Port Restrictions and Requirements in the United States/Japan Trade (Docket No. 96-20)	3072-AB97

Completed Actions

Sequence Number	Title	Regulation Identifier Number
4287	Inquiry Into Automated Tariff Filing Systems as Proposed by the Pending Ocean Shipping Reform Act of 1998 (Docket No. 98-10)	3072-AC00
4288	Miscellaneous Amendments to Rules of Practice and Procedure (Docket No. 98-21)	3072-AC02
4289	Amendments to Regulations Governing Restrictive Foreign Shipping Practices and New Regulations Governing Controlled Carriers (Docket No. 98-25)	3072-AC03
4290	Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 (Docket No. 98-26)	3072-AC04
4291	Marine Terminal Operator Schedules (Docket No. 98-27)	3072-AC05

FEDERAL MARITIME COMMISSION (FMC)

Long-Term Actions

4284. COLOADING PRACTICES AND POSSIBLE SECTION 16 EXEMPTION FOR COLOADING (DOCKET NOS. 93-22 AND 94-26)

Priority: Substantive, Nonsignificant

CFR Citation: 46 **CFR** 514.15; 46 **CFR** 580.5; 46 **CFR** 581.1; 46 CFR 581.3

Timetable:

Action	Date	FR Cite
NPRM	11/24/93	58 FR 62077
NPRM Comment Period End	03/11/94	59 FR 5974
Notice of Inquiry (Docket No. 94-26)	11/09/94	59 FR 55826
Comment Period End for NOI (Docket No. 94-26)	12/27/94	
NOI Comment Penod Extended to 01/23/95	12/28/94	59 FR 66880
Final Action	To Be Determined	
Final Action Effective	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Panebianco
Phone: 202 523-5740
Fax: 202 523-5738
Email: thomas__p@fmc.gov

RIN: 3072–AB75

4285. **FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION AND INQUIRY INTO ALTERNATIVE FORMS (DOCKET NO. 94-06; FURTHER NOTICE OF --PROPOSED RULEMAKING)**

Priority: Other Significant

Reinventing Government: This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

CFR Citation: 46 CFR 540.5; 46 CFR 540.9

Timetable:

Action	Date	FR Cite
NPRM	03/31/94	59 FR 15149
NPRM Comment Period End	05/02/94	
Comment Period Extended to	06/10/94	59 FR 23182
Comment Period Extended to	06/24/94	59 FR 30567
Notice of Inquiry . (Docket No. 94-21)	10/14/94	59 FR 52133
Clarification of Notrce of Inquiry	11/02/94	59 FR 54878
Comment Period End for Notice of Inquiry	11/28/94	59 FR 52133
Further NPRM (Docket No. 94-06)	06/26/96	61 FR 33059
Discontinuance of Proceeding for Docket No. 94-21	07/03/96	61 FR 39940
Further NPRM Comment Period End	08126196	61 FR 33059
Comment Period Extended to	09/25/96	61 FR 43209
Comment Period Extended to	10/15/96	61 FR 50265
Final Action	To Be Determined	
Final Action Effective	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin L. Schmitt
Phone: 202 523-5796
Fax: 202 523-5830
Email: austins@fmc.gov

RIN: 3072–AB80

4286. PORT RESTRICTIONS AND REQUIREMENTS IN THE UNITED STATES/JAPAN TRADE (DOCKET NO. 96-20)

Priority: Other Significant

CFR Citation: 46 **CFR** 586

Timetable:

Action	Date	FR Cite
NPRM	11/13/96	61 FR 58160
Comment Penod Extended to 01/20/97	12/27/96	61 FR68200
NPRM Comment Period End	01/13/97	
Final Rule	03104197	62 FR 9696
Final Rule Effective	04/14/97	
Amendment to Final Rule	04/16/97	62 FR 18532
Final Rule Effectiveness Extended to 09/04/97	04/16/97	62 FR 18533
Status Reports and Comments Due 07/01/97	04/16/97	62 FR 18533
Status Reports and Comments Due 08/05/97	04/16/97	62 FR 18433
Amendment to Final Rule - Denial of Petition	10/20/97	62 FR 54396
Final Rule Effectweness Suspended 11/13/97	11/19/97	62 FR 61648
Final Action	To Be Determined	
Final Action Effective	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Panebianco
Phone: 202 523-5740
Fax: 202 523-5738
Email: thomas__p@fmc.gov

RIN: 3072–AB97

FEDERAL MARITIME COMMISSION (FMC)

Completed Actions

4287. INQUIRY INTO AUTOMATED TARIFF FILING SYSTEMS AS PROPOSED BY THE PENDING OCEAN SHIPPING REFORM ACT OF 1998 (DOCKET NO. 98-10)

Priority: Other Significant

Legal Authority: 46 **USC app** 1701 et seq

CFR Citation: 46 **CFR** 514

Legal Deadline: None

Abstract: The purposes of the inquiry are to determine an approach that will produce private automated tariff publication systems that best comport with the directives of S.414, the Ocean Shipping Reform Act of 1998, and its legislative history and to determine whether ocean common carriers should be required to file service contracts electronically. Comments are solicited on the possible requirements for such tariff filing systems and on the electronic filing of service contracts and publication of essential terms.